THE
Justice of the Peace,
AND
PARISH OFFICER.

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LATE CHANCELLOR OF THE DIOCESE OF CARLISLE.

THE TWENTY-FOURTH EDITION:
With Corrections, Additions, and Improvements.
The Cases brought down to the End of Trinity Term, 5 Geo. IV. 1824.
And the Statutes to the End of 5 Geo. IV. 1824.

By Sir GEORGE CHETWYND, Bart. M.P.
BARRISTER AT LAW,
AND CHAIRMAN OF THE GENERAL QUARTER SESSIONS OF THE PEACE FOR THE COUNTY OF STAFFORD.

Dr. Burn has great merit: He has done great service, and deserves great commendation.—*Per* Lord Mansfield C. J. Burr. S. C. 548.

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A

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OF THE

NAMES OF CASES

IN THIS VOLUME.

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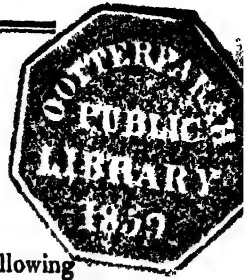
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OF this extensive title it is proposed to treat in the following order; *viz.*

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§ I. Of Overseers; and herein,

(1.) *For what places overseers may be.*
(2.) *What is a township or vill.*
(3.) *What number of overseers may be appointed.*
(4.) *Who may be appointed.*
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(6.) *Of stat.* 13 & 14 *C.* 2. c. 12., *for appointing overseers in townships or villages.*
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§ I. (1.) For what places Overseers may be.

Anciently, the maintenance of the poor was chiefly an ecclesiastical concern. A fourth part of the tithes in every parish was set apart for that purpose. The minister, under the bishop, had the principal direction in the disposal thereof, assisted by the churchwardens and other principal inhabitants. Hence naturally became established the parochial settlement. Afterwards, when the tithes of many of the parishes became appropriated to the monasteries, those societies had some share likewise (by reason of the said tithes, and other donations for that purpose) in the relief of the poor; and the rest was made up by voluntary contributions. But though the relief of the poor was in a great degree an ecclesiastical concern, it is not true (as some people have imagined) that the common law of *England* made no provision for the poor; the *Mirror* shews the contrary; how it was done,
27 H. 8. c. 25 indeed, does not appear. (1 *Burr.* 450.)——By stat. 27 *H.* 8. *c.* 25., the *churchwardens* or *two other* of every parish were to
5 & 6 Ed. 6. c. 2. make *collections* for the poor on *Sundays*.——By stat. 5 & 6 *Ed.* 6. *c.* 2., *the minister and churchwardens* were annually to appoint *two able persons or more* to be *gatherers and collectors* of alms
5 El. c. 3. for the poor.——By stat. 5 *Eliz. c.* 3., the parishioners were to choose the said *collectors and gatherers* for the poor.—— By stat.
14 El. c. 5. 14 *Eliz. c.* 5., the *justices* were to appoint *collectors* for the poor within every parish; and were also to appoint the overseer of the poor, whose office was nearly the same as it is at present, except only for collecting the money, which was done by the aforesaid
18 El. c. 3. *gatherers* or *collectors*.—— By stat. 18 *Eliz. c.* 3., the justices were to appoint *collectors* and *governors* of the poor.—— By stat.
39 El. c. 3. 39 *El. c.* 3., the churchwardens of every parish, and four *substantial householders* there, being subsidy men, or, for want of subsidy men, four other substantial householders, to be nominated yearly in *Easter* week by two justices, (1 Q.) were to be called *overseers of the poor* of the same parish.——And so it continues with
43 El. c. 2. some small variation, by stat. 43 *Eliz. c.* 2. § 1. (*a*) which is the great constitution of the system of law concerning the poor, and is as follows: See *R.* v. *Loxdale*, *post*. p. 9.

43 El. c. 2. 54 G. 3. c. 91. 59 G. 3. c. 12. Statutes concerning the appointment of overseers. Their number in parishes.

By stat. 43 *El. c.* 2. § 1. *The churchwardens of every parish, and four, three, or two substantial householders there, as shall be thought meet, having respect to the proportion and greatness of the same parish and parishes, to be nominated yearly in* Easter *week, or within one month after* Easter [but now by stat. 54 *Geo.* 3. *c.* 91. on the 25th of *March*, or within fourteen days next after, and see further 59 *Geo.* 3. *c.* 12. § 6, 7, *post*, p. 13, 14.] *under the hand and seal of two or more justices of the peace in the same county, whereof one to be of the* quorum, *dwelling in or near the same parish or division where the same parish doth lie, shall be called overseers of the poor of the same parish.*

(*a*) The reader who may be desirous of informing himself more particularly as to the provision for the poor antecedently to the 43 *Eliz.* will do well to consult Mr. *Nolan's* Treatise on the Poor Laws, ch. 1.

By this stat. *a parish* was the only district bound or entitled to the separate maintenance of its poor, but townships and villages, whether parochial or extra-parochial, are now brought within the same system, by the construction put upon the statute 13 & 14 *C.* 2. c. 12. § 21. by which, after reciting that, whereas the inhabitants of the counties of *Lancashire*, *Cheshire*, *Derbyshire*, *Yorkshire*, *Northumberland*, the bishopric of *Durham*, *Cumberland* and *Westmorland*, and many other counties in *England* and *Wales*, by reason of the largeness of the parishes within the same, *have not nor cannot* reap the benefit of the act of the 43 *Eliz.*, it is enacted, that all and every the poor, needy, impotent and lame person and persons, within every *township or village* within the several counties aforesaid, shall from and after the passing of this act be maintained, kept, provided for and set on work, within the several and respective township and village, wherein he, she, or they shall inhabit, or wherein he, she, and they, was or were last lawfully settled, according to the intent and meaning of this act; and that there shall be yearly chosen and appointed two or more overseers within every of the said townships or villages, in manner as is by the said act of *Eliz.* directed, and liable to the same duties, and pains, and penalties for non-performance thereof.

13 & 14 C. 2. c. 12. In villages and townships.

Stat. 43 *Eliz. c.* 2. § 8. enacts, that the mayors, bailiffs, or other head officers of every town, and place corporate, and city within this realm, being justice or justices of peace, shall have the same authority by virtue of this act, within the limits and precincts of their jurisdictions, as well out of sessions, as at their sessions, if they hold any, as is herein limited, prescribed, and appointed to justices of the peace of the county, or any two or more of them, or to the justices of peace in their quarter sessions, to do and execute for all the uses and purposes in this act prescribed, and no other justice or justices of peace to enter or meddle there: (2) and that every alderman of the city of *London* within his ward shall and may do and execute in every respect so much as is appointed and allowed by this act to be done and executed by one or two justices of peace of any county within this realm.

43 El. c. 2. § 8. Officers of corporate towns have the authority of justices of peace.

Aldermen of London.

And by § 9. If a parish extend into more counties than one, and a part be within the liberties of a corporate place and part without, the justices of every county, and the head officers of such place corporate, shall intermeddle only within their liberties, and not any further: and every of them respectively, within their several jurisdictions, shall execute the ordinances before-mentioned, concerning the nomination of overseers, &c.; and the said churchwardens and overseers, or the most part of them, of the said parishes that do extend into such several limits and jurisdictions, shall, without dividing themselves, duly execute their office in all places within the said parish, in all things to them belonging; and shall duly exhibit and make one account before the said head officer of the town or place corporate, and one other before the said justices of peace, or any such two of them, as is aforesaid.

A parish extending into two counties, or into two liberties.

No district can possess a right of separately providing for the poor unless it be either a *parish* within the 43 *Eliz.* (which it may be, though anciently but parcel of another parish) or a *township*, or village within the 13 & 14 *C.* 2.; and no district, not already possessing that right, can claim it, unless such district be not only within some of the descriptions, but likewise, if a township or

Must be either a parish or a township.

vill, unable to reap the benefit of 43 *Eliz.* without a separate establishment. *Hilton* v. *Pawle, Cro. Car.* 92. 1 *Bott.* 32. *Nicholas* v. *Walker. Cro. Car.* 394. 1 *Bott.* 33.

Every churchwarden is also an overseer.

The churchwardens.] These were overseers of the poor long before this statute of the 43 *Eliz.* And hereby they need no formal appointment to the office of overseer, but the statute declares them to be such, and requires others to be added to them by the nomination of the justices.

Of every parish.] A parish, in strictness, seems to be, " that circuit of ground which is committed to the charge of one parson, or vicar, or other minister having cure of souls therein." 1 *Blac. Com.* 111.

But stat. 43 *Eliz.* is deemed to be satisfied although the district be not, in this precise sense, a parish; so that it were at the time of passing that act, and has been ever since a parish by reputation. *Nicholas* v. *Walker, Cro. Car.* 394. 1 *Bott.* 33.

It is indispensable that this reputation shall not have commenced subsequently to that time, the statute relating only to parishes then *in esse. Hilton* v. *Pawle, Cro. Car.* 92. 1 *Bott.* 32. *Et vide per Holt* C. J. *Dean* v. *Linton,* 2 *Salk.* 487.

It has been ruled, that making separate rates, and having, in times before the statute, had a chapel, will not, without all other parochial rights, make a parish of a place which was not so reputed before the statute. *Rudd* v. *Forster,* 4 *Mod.* 157. 1 *Bott.* 34.

The appointment of overseers must be for a parish, township or vill, not for a precinct.

In *Rex* v. *Severn and Arnold, T.* 29 & 30 *Geo.* 2., 1 *Bott.* 4. two justices appointed *Severn* and *Arnold,* substantial householders in the *precinct* of the Tower Within, *otherwise called the parish of St. Peter ad vincula,* to be overseers of the poor of the said *precinct.* It was objected, that this appointment is not warranted by the statute, which requires that the churchwardens of every *parish,* and four, three, or two substantial householders there, shall be appointed overseers of the poor of the same *parish. Denison* J. We are of opinion, and the late Chief Justice (*a*) did concur in this opinion, that this is not a good appointment under the 43 *Eliz. c.* 2. which requires them to be appointed within a *parish;* neither is it good within the statute of 13 & 14 *C.* 2. *c.* 12. which says, that there shall be yearly appointed two or more overseers within every *township* and *village* respectively. *Precinct* is a word of ambiguous signification; it is not a boundary of any parish or vill; it may be more than a parish, or may be less. If it were a parish or vill by *reputation,* it might have been good (*Cro. Car.* 92. 394.); but the Court cannot intend this precinct to be a vill, and the words of the statute ought to be pursued. Neither will the words *otherwise called the parish of St. Peter ad vincula* aid the want of this in the appointment: for in all constructions of *alias dict.* the words that go before the *alias dict.* must be presumed to be true: as in an indictment, the addition of the party not coming till after the *alias dict.*, will vitiate the indictment, for what precedes the *alias dict.* is the true and proper appellation (3 *Bulst.* 296.) If in this case the *alias dict.* had come after the parish of *St. Peter,* it would have done. And the appointment was quashed. *Say.* 278. *S. C.*

But a precinct which is a parish or vill by reputation may be good.

(*a*) Ld. C. J. *Ryder* (grandfather of the present earl of *Harrowby*) died on the 25th *May* 1756. Lord *Mansfield* took his place in the court of *K. B.* as Lord Chief Justice, on the 11th of November, 1756. 30 *G.* 2. *Vide* 1 *Burr.* 2.

Rex v. *Inh. of Rufford, E.* 8 *Geo.* 1. 1 *Str.* 512. 1 *Bott.* 36. 1 *Nol. P. L.* 10. A *mandamus* was directed to the justices of the peace of the county of *Nottingham*, reciting, that within the vill of *Rufford*, in the forest of *Sherwood*, there were divers substantial freeholders, able to contribute to the maintenance of the poor, and that there were no churchwardens or overseers to make a rate, and that there were poor unprovided for; therefore it commanded them to appoint overseers. They return, that the vill of *Rufford* is part of no parish, but time out of mind has been extra-parochial, without church, chapel, or parochial rights, and that there never have been any overseers of the poor; and for that cause they cannot appoint. After argument and consideration of all the statutes relating to the poor, the Court were of opinion, that the powers given by stat. 43 *Eliz. c.* 2. to be executed in parishes, were by stat. 13 & 14 *C.* 2. *c.* 12. extended to all townships and villages, whether parochial or extra-parochial: that although most of the forests in *England* are extra-parochial, yet notwithstanding they ought to maintain their own poor, and consequently overseers might be appointed; for which purpose, in this case a peremptory *mandamus* was awarded.

But the township or vill may be extra-parochial.

For the statute (13 & 14 *C.* 2. *c.* 12.) directeth overseers to be appointed within the several townships and villages within the several *counties*, without saying, within the several *parishes* in the said counties; so that if it be a township or village, and such township or village is within the *county*, it seemeth not to be material whether it be within any *parish* or not.

But a township or village it must be. In *Rex* v. *Denham, E.* 8 *G.* 2. 1 *Bott.* 37. 1 *Nol. P. L.* 13. The question was, whether *Southwold* park, being *an extra-parochial place*, and consisting of two houses, and about 300 acres of land, was such a place as was liable to maintain its own poor? By the Court; it is now a settled point *that the justices may appoint overseers in extra-parochial places*, but such place must come under the notion of a town or village.

But the place must be a township or village.

So in *Rex* v. *Welbeck, M.* 14 *Geo.* 2. 2 *Str.* 1143. 1 *Bott.* 38. 1 *Nol. P. L.* 11. 13. The return to a *mandamus* was, that *Welbeck* was an extra-parochial place, that it was not nor ever had been a township or vill, nor had ever been reputed to be a township or vill: And it was held that the Court could only send a writ of *mandamus*, commanding the appointment of overseers to a township or village, or a place reputed as such; and if a *mandamus* be sent to an extra-parochial place not being either, it is sufficient to return that it is not a vill; and the fact of there being *substantial householders* is immaterial, if it appear not to be a vill.

So also a place in a parish must be a township or vill in order to have its own overseers distinct from those of the parish. *Rex* v. *Showler and Atter, T.* 3 *Geo.* 3. 3 *Burr.* 1391. 1 *Bott.* 41.

And in *Rex* v. *J. of Bedfordshire, E.* 22 *Geo.* 3. *Cald.* 167. 1 *Bott.* 48. 1 *Nol. P. L.* 10. 15. It was holden that in order to obtain a *mandamus* to compel justices to appoint overseers of the poor, it must be expressly sworn that the place in question either is or is reputed to be a vill.

The place must either be a vill or a reputed vill.

And if a place be found by the sessions to be a vill, the appointment of separate overseers is of course. *Rex* v. *Ranton, vulg. voc. Ronton Abbey,* 2 *T. R.* 207. 1 *Bott.* 56. 1 *Nol. P. L.* 13, 14. 16, 17, 18. 22, 23.

§ I. (2.) What is a Township or Vill.

Vill, village and township, are considered as synonymous, and a place so called may be such, either in strictness or by reputation. In one of these two modes, it must have been a vill, at least as early as the stat. 13 & 14 *C.* 2. which, as the stat. 43 *Eliz. c.* 2. has been decided to embrace only parishes *in esse* in the forty-third year of that reign, must be taken to embrace only such vills as had an existence in the year 1662, which was the 13 & 14 of the reign of *Charles* 2. Vide *Jacob's Law Dictionary, tit.* "Parish." 1 *Bla. Com.* 114. 1 *Nol. P. L. c.* 2. pp. 8, 9.

In *Rex* v. *Denham, Burr. S. C.* 37. Ld. *Hardwicke* C. J. observes, that it is very hard to define exactly what is a township or a village; and, that it must be left to the judgment of the Court, upon the circumstances of the case stated. Ld. *Coke* says "*Villa est ex pluribus mansionibus vicinata, et collata ex pluribus vicinis.*" 1 *Inst.* 115. *b.*

What is not a township or vill.

In *Rex* v. *Denham, E.* 8 *Geo.* 2. 1 *Bott.* 37. 1 *Nol. P. L.* 13. It was held that a single house or two houses cannot amount to the notion of a town or village, and that if it had been formerly a town or village, if the houses were in fact decayed and gone, it would cease to be a town or village.

What is a township or vill.

Lee J. observed that the notion of a village, according to the ancient law, is a tithing consisting of ten families; that, according to the modern notion, it is a place that has a constable; that it ought to have at least the reputation of a town or vill: and that a vill must at least mean more than two houses (*a*). It seems from *R.* v. *Eyford* (*overseers*) *Cald.* 542., that although there be but one or two houses only, yet it may be a vill by reputation; and that wherever there is a large assemblage of houses, reputation is not necessary: for a place may become a vill in fact, though it be not so immemorially, *Dolting* v. *Stokelane, Fortesc.* 219.; the intent of the stat. 13 & 14 *C.* 2. *c.* 12. being, that as soon as it becomes a vill, the justices may appoint. See 4 *M.* & *S. R.* 381, 382.

Wherever there is a constable there is a township. *Rex* v. *Sir Watts Horton,* 1 *Bott.* 54. *Per Buller* J.

Where there is a constable.

A parish may contain any number of vills, each having its constable: but if the constablewick of A runs through all the vills B, C, &c., A is the superior or mother vill, and the land which is in the others shall pass by the description of (all the lands in A). So, where there is a tithing man in B, B may be a vill; but if the constable of A have power in B, A and B make but one vill. See 1 *Mod.* 78. 1 *Ventr.* 170.

Five dwelling-houses and farms held not a township or village to which a removal may be made.

In *Rex* v. *Grafton, E.* 10 *Geo.* 2. *Burr. S. C.* 101. 2 *Str.* 1071. 1 *Bott.* 37. 1 *Nol. P. L.* 15. The manor of *Grafton,* an extra-parochial place, once consisting of a capital messuage and three keepers' lodges in the park now disparked, and consisting of five dwelling-houses and farms, occupied by five several tenants, but never having had any overseers of the poor or other officers, till the overseer now appointed for the purpose of the present removal, was adjudged by the justices to be a township or village

(*a*) The like was said to have been adjudged in *Rex* v. *Belvoir Castle, M.* 2 *Geo.* 2.

within the statute unto which a removal might be made. It was moved to quash the orders of the justices, and a rule was made to shew cause: and afterwards the rule was made absolute, without defence.

By the case of *Rex* v. *Welbeck*, 1 *Bott*. 38. the fact of there being substantial householders is immaterial if it appear not to be a vill.

One capital messuage and four labourers' cottages held not to constitute a vill for the purpose of having separate

So in *Rex* v. *Showler and Atter*, *T*. 3 *Geo*. 3. 3 *Burr*. 1391. 1 *Bott*. 41. 1 *Nol. P. L.* 15. Two justices appoint *Thomas Showler* and *John Atter* overseers of the poor of the township or village of *Haugh*. The sessions, upon appeal, adjudge *Haugh* to be a village or township, and confirm the appointment, and state specially, that it appears to them, that the said place called *Haugh*, consists of a capital messuage, in which *Thomas Showler*, in the said appointment named, with all his family, dwells; and of two small ancient cottages; and of one other small cottage lately built (all which cottages are let, along with the said capital messuage and the farm thereunto belonging, to the said *Thomas Showler*); and of another tenement part of the said capital messuage; and all of them inhabited by families; and that one of the cottages is inhabited by the said *John Atter*, who is a day-labourer, and his family; and another of the said cottages is inhabited by another day-labourer and his family; and the other of the said cottages is inhabited by a shepherd and his family; and the tenement, part of the said capital messuage, is inhabited by a poor widow and her five children; all which occupiers of the said cottages, and of the said tenement, part of the said capital messuage, are under-tenants to the said *Thomas Showler*. It was moved to quash these orders, for that the facts stated shew that this place is neither a township nor a village. — And the Court were clearly and unanimously of opinion, that both these orders ought to be discharged.—Ld. *Mansfield* C. J. observed, that by this method a place might be made into a village, which in fact was not so; and the inhabitants of it might by this contrivance withdraw themselves from contributing towards the support of the poor of their parish.

The site of a cathedral and its area, do not constitute a vill, though there be many houses, &c. upon it.

In *Rex* v. *Justices of Peterborough*, *H*. 23 *Geo*. 3. *Cald*. 238. 1 *Bott*. 50. 1 *Nol. P. L.* 15. On shewing cause against a rule which had been obtained for a *mandamus*, to require the appointment of overseers of the poor, for the Minster in *Peterborough*, it appeared that it was an extra-parochial place, containing upwards of sixty acres of ground, upon which were twenty-five dwelling-houses at least, besides poor houses of the annual value of 40*l*. at least; that these houses were inhabited, except in the instance of the bishop and three of the prebendal houses, altogether by laymen or by strangers to the cathedral, and mostly persons of fortune, who kept servants that acquired settlements therein. That the poor had been supported from some fund belonging to the dean and chapter; that there never was any constable or other civil officer appointed for the said precinct, or any overseer of the poor, or churchwarden; nor had the inhabitants ever contributed to the relief of the poor within the precinct, or been called upon so to do.—Ld. *Mansfield*. This space comprehends no more than the site of the cathedral and the area round it, and consequently was in former times within sanctuary, and,

as such, sacred and inviolable as the church itself. In modern times, to be sure, there is no such thing as sanctuary, but these places have throughout all ages without interruption enjoyed those immunities, as *Westminster* Abbey now does, and other places of the like nature. The ancient inns of court, though not exactly upon this principle, have also at all times been privileged; and a similar exemption was not questioned in a late case, *Rex* v. *Gardner* (*post.* § II. 3.), with respect to that part of the court and garden ground of *Catherine Hall* in the university of *Cambridge*, which lay within the old and extra-parochial part of that foundation. Would you say that *Christchurch* in *Oxford* is a vill? I am not satisfied that this place is a vill, and the party applying do not even call it so. — *Buller* J. As the party applying for a *mandamus* does not state, as a fact, that this place was ever reputed a vill, (which, where the facts of the case do not upon some clear principle of law shew the place to be of that denomination, the court has holden to be indispensably necessary for the purpose of founding an application for a *mandamus*,) this case falls within the case cited. Rule discharged.

In *Rex* v. *Standard Hill*, *M.* 1815. 4 *M.* & *S.* 382. *Lord Ellenborough* (speaking of a part of the old castle at *Nottingham*), said the immediate consequence of holding this to be a vill, for which overseers ought to be appointed, would be that overseers must be appointed for all the inns of court, and every collegiate or ecclesiastical establishment, which would work a great alteration in the laws relating to this subject.

Vill and hamlet are synonymous terms.

An order appointing overseers of the "hamlet" of *B.* in the parish of *C.* is good; for it shall be intended, that the place was a vill, unless it be stated to be otherwise (*a*); for "vill" and "hamlet" are in common acceptation used as synonymous terms. *Rex* v. *Morris*, 4 *T. R.* 550. 1 *Bott.* 6. 65. 1 *Nol. P. L.* 11.

In *Rex* v. *Ranton*(*vulg. voc. Ronton*) *Abbey*, 2 *T. R.* 207. 1 *Bott.* 56., which wasa case sent up by the sessions, for the opinion of the court of K. B., there were only three houses and no constable or tithing-man, nor it seems any church or chapel, and this passed as a vill; but then it was expressly found by the sessions to be a vill by reputation, which precluded all question before the court above, whether it were so or not: so, that this case proves not that three houses alone make a vill, but only, that if a place be *found by the sessions* to be a vill by reputation, it may be taken to be such, though there be extant but three houses, and no other characterising circumstances.

Rex v. *Standard Hill*, *M.* 1815. 4 *M.* & *S.* 382. The court of K. B. will, on removal by *certiorari* of an appointment by two justices of overseers of the poor, enquire on affidavit whether the place for which the appointment is made be a *township* or *vill*; and where it was not stated and did not appear from the affidavits to be either a township, hamlet, or vill, or to be reputed such, but on the contrary was shewn to be part of the old castle of *Nottingham*, the court quashed the appointment.

(*a*) And see 1 *Mod.* 250. 2 *Ventr.* 31. *Freem.* 241.

§ I. (3.) What Number may be appointed.

Four, three, or two.] The number of overseers for any one parish, *exclusively of the churchwardens*, must be not more than four, nor fewer than two, except where it is subdivided into townships, in which case each township may have four, three, or two overseers, or where a greater latitude is given by some special statute; and no usage for a greater or smaller number than the stat. of the 43 *Eliz.* prescribes, will avail against the strong and express terms of its enactment: nay, if more than four be appointed, the instrument is void, not only as to the excess beyond four, but, as to every one of the persons appointed. *Rex* v. *Loxdale*, 1 *Burr.* 446. 1 *Bott.* 21. *Rex* v. *Morris*, 4 *T. R.* 550. 1 *Bott.* 6. *Rex* v. *Harman*, 2 *Sess. Ca.* 148. 1 *Bott.* 19. *Rex* v. *Clifton*, 2 *East*, 168. 1 *Bott.* 24. 1 *Nol. P. L.* 47, 48. *Rex* v. *All Saints, Derby*, 13 *East.* 143. Vol. I. page 144. title Apprentices. 1 *Nol. P. L.* 48. *Rex* v. *Forrest*, 3 *T. R.* 38. 1 *Bott.* 17. *Rex* v. *Wymondham*, 6 *T. R.* 552. 43 El. c.2.

The statute requires, that there shall be two overseers at least, distinct from the churchwardens, and that the aggregate body should consist of at least more than two persons. 13 *East*, 142. 1 *Nol. P. L.* 48.

A local act directed that the then overseers of the parish of *W.* should continue to be overseers for the remainder of the current year, and until two others should be appointed, and that two overseers should be appointed annually: Held, that this act did not repeal the statute 43 *Eliz.* c. 2. s. 1., and that an appointment of four overseers for the parish of *W.* was valid.

Rex v. *Pinney and Another.* *M.* 4 *G.* 4. 2 *B.* & *C.* 322. By stat. 47 *G.* 3. *sess.* 2. *c.* cxi. *s.* 92. (local and personal act) it was enacted that the then overseers of the parish of *Woolwich*, should continue to be overseers for the remainder of the year 1807, and until two other overseers should be nominated and appointed, in the manner and at the time by law directed, to succeed them: and in *Easter* week, or within one month of *Easter*, in every year, two persons being substantial householders in the said parish, should be nominated and appointed, in the manner by law directed, to be overseers of the poor of the said parish. By an order of two justices, made on the 25th *March* 1823, four persons therein named were appointed overseers of the poor of the parish of *Woolwich*; and upon appeal the sessions confirmed that order. A rule *nisi* having been obtained for quashing the order of sessions, and the case having been argued, —— *Abbott* C. J. It is a general rule of construction that affirmative words in a later statute do not repeal a former, unless there be something wholly inconsistent in the provisions of the two statutes. Lord C.B. *Comyns*, in his *Digest*, tit. *Parliament*, R. 25., lays it down that such affirmative words do not take away a former statute, unless they in sense contain a negative. Now the statute of *Elizabeth* directs that the overseers for parishes shall be four, three, or two substantial householders. The local act merely directs that the then overseers should continue in office to the end of the year, and until two others should be appointed, and that two others should be annually appointed. These words do not, in sense, contain a negative, nor is there any inconsistency between a provision authorizing the appointment of four, three, or two overseers, and another directing the appointment of two. The latter statute requires absolutely that two shall be appointed, but it does not say that more than two shall not be appointed. That being so, I am of opinion that the provision of the statute

of *Elizabeth* as to the appointment of overseers, is not repealed by the local act, and that the order of justices was right. Rule discharged. (*a*)

Quere, whether there must be more than one churchwarden? See *Rex* v. *All Saints, Derby, ante*, p. 9. and *R.* v. *Hinckley*, post.

§ I. (4.) Who may be appointed.

Substantial householders there.] The overseers for any district, beside the churchwardens for the time being, who are always overseers by virtue of their office without any specific appointment to be overseers, are to be substantial householders. *Reg.* v. *Searle*, 1 *Bott.* 3.

A., *B.*, and *C.* carrying on trade in partnership, had a dwelling-house, yard, and premises, in a parish in *London*; all the partners were in the habit of frequenting the premises daily for the purpose of business, but none of them resided there. The dwelling-house was inhabited by a clerk, who managed the business for them, but the rent, rates, and taxes were paid by the firm: Held, that each of the partners was a householder within stat. 43 *Eliz.* c. 2. and liable to serve the office of overseer.

Rex v. *Poynder*, *H.* 3 & 4 *G.* 4. 1 *B.* & *C.* 178. Indictment against the defendant for refusing to take upon him the office of overseer of the poor of the parish of *St. Ann's*, *Blackfriars*. Plea, not guilty. At the trial, before *Abbott* C. J., at the *London* sittings after last *Mich. T.* the only question was, whether the defendant was a householder within the meaning of the 43 *Eliz. c.* 2. It appeared that the defendant, *William Hopson* and *Thomas Poynder* the younger, were lime merchants and co-partners, and were the owners of a dwelling-house, yard, premises, and building in *Earl-street*, in the parish of *St. Ann*, *Blackfriars*, in the city of *London*, but that neither of them ever slept there, the defendant and *Poynder* the younger dwelling at *Clapham Common*, and *Hopson* at *Stamford-hill*, in the parish of *Tottenham*, in the county of *Middlesex*. One *Medlicott*, who managed the business for them, resided in the house in *Earl-street*. The rent, rates, and taxes were paid by the firm. Each of the partners frequented the premises daily, for the purpose of business, and the defendant had once voted at an election of a lecturer, which was a privilege belonging to resident householders. It was contended at the trial, that the defendant was not a householder within the statute of *Elizabeth*. The Lord Chief Justice was of opinion that he was, and a verdict was found for the crown. On motion for a new trial, *Denman* C. S. cited *Rex* v. *Hall*, 1 *B.* & *C.* 123, in which this court decided that one of several partners resorting daily for the purpose of business to a house rented by all, but which was inhabited by their servant, was a householder in the place where the house was situate, so as to qualify him to be a commissioner of a court of requests. (*b*) In *Margett's* case, 2 *Leach*, 930, 2 *Russ.* 932. the house was occupied by the agent of a trading company, and he resided in it with his family, only for the purpose of conducting the trade. The lease was held, and the rent and taxes paid by the company. Yet *Graham* B. and *Grose* J., at the O. B. sessions, 1801, held an indictment to be good, which stated the burglary as being committed in the dwelling-house of the agent. — *Per Curiam.* When a similar question was under our consideration last term, we were not insensible that a distinction might be attempted to be made between those cases where the legislature intended to confer a benefit, and others where it intended to im-

(*a*) See *Plowden*, 112, 113., and *Rex* v. *Burridge*, 3 *Peere W.* 461.

(*b*) The question arose in this case on the qualification of persons to vote as householders for a commissioner in the *Bristol* Court of Requests, under stat. 26 *G.* 3. *c.* 28. § 8. and see 1 *Nol. P. L.* 48, 49.

pose a burden. We were of opinion that there was no foundation for such a distinction, and that the same rule of construction ought to prevail in all cases. We have no doubt in this case that the defendant is a householder within the meaning of the statute of *Eliz.* It was in evidence that he had enjoyed one of the privileges of a resident householder; for he had voted for a lecturer, which was a privilege belonging to resident householders only. R.R. See also *R.* v. *Adlard, Lond.* 49. *Sitt. aft. E. T.* 5 *G.* 4. *cor. Abbott* C. J.

The court of K. B. will quash the appointment as to any appointees who are not substantial householders. *Rex* v. *Weobly in Herefordshire*, 2 *Str.* 1261. 1 *Bott.* 4. 1 *Nol. P. L.* 53. In that case the defendants were appointed overseers for the town of *Weobly*, and in the appointment were styled principal inhabitants. It was moved to quash this appointment, because they were not described to be substantial householders. *Et per Curiam.* The justices must certainly pursue the power given them, which is to appoint substantial householders, which is a much more limited description than inhabitants; for a man may be an inhabitant, and a principal inhabitant, and not be a householder: so this appointment is void. *Vide* 1 *B. & C.* 131. (*notis*).

But the word "substantial" is so far relative, that where there were no persons more wealthy, two day-labourers with some land annexed to their cottages, of whom one only was a proprietor, and the other a farmer's servant, were held to be competent overseers, although the appointment of such men might be improper "in a place where there are a great many opulent farmers." *Rex* v. *Stubbs*, 2 *T. R.* 406. 1 *Bott.* 5.

The phrase "*substantial householders*" has no reference to sex: wherefore although men are more proper to be appointed than women, where there are a sufficient number of men qualified; yet a woman may be appointed where the necessity of the case requires it. *Rex* v. *Stubbs*, 2 *T. R.* 395. 1 *Bott.* 10. *Rex* v. *Chardstock*, 16 *Vin. Abr.* 415. 1 *Bott.* 11. note (*b*).

Occasional residents. The appointment of persons resident only for a part of the year is discouraged by the courts: but such persons seem eligible in cases of necessity. *Rex* v. *Moor, Carth.* 161. 1 *Bott.* 9. 1 *Nol. P. L.* 50.

The justices are to determine where this necessity exists, being "invested with a discretionary power of approbation." *Rex* v. *Stubbs*, 2 *T. R.* 395. 1 *Bott.* 11. *Rex* v. *Gayer*, 1 *Burr.* 245. 1 *Bott.* 9. 1 *Nol. P. L.* 50.

But they are not at liberty in any case to make a nomination from the following classes:

Churchwardens. 1. Churchwardens during their continuance in office. *Rex* v. *All Saints, Derby*, 13 *East.* 143.

Clergymen. 2. Clergymen, though without cure of souls. *Anon.* 1 *Bott.* 9. *Gibs. Codex.* 215.

Dissenting ministers. 3. Dissenting ministers, taking the oaths and subscribing the declaration and articles pointed out by 1 *W. & M. c.* 18. although they be also engaged in a trade. 1 *W. & M. c.* 18. § 1. 52 *G.* 3. *c.* 155. § 9. *Kenward* v. *Knowles, Willes*, 463. 1 *Gibs. Codex.* 215.

Peers. 4. Peers, by reason of their dignity. 1 *Gibs. Codex.* 215.

Members of parliament. 5. Members of parliament, by reason of their privilege. *Ibid.*

Aldermen of London. 6. Aldermen of London. *Rex* v. *Abdy, Cro. Car.* 585. 1 *Bott.* 8.

Justices of peace. 7. Justices of the peace, as having the control of overseers'

accounts. *Rex* v. *Gayer*, 2 *Burr.* 245. 1 *Bott.* 9. and *per Ld. Kenyon* C. J. in *Rex* v. *Pateman*, 2 *T. R.* 779. See *Stra.* 698.

Practising barristers and attornies. 8. Practising barristers and attornies, though there be a special custom for every parishioner to serve, according to the situation of his house. *Rex* v. *Prouse*, *Cro. Car.* 389. 1 *Bott.* 7. 1 *Nol. P. L.* 51. *Et vide* 8 *T. R.* 379. note (*a*).

Physicians. 9. The president, commons, and fellows of the College of Physicians, (whose exemption, however, extends no further than the city of *London*,) but apparently no other physicians. Stat. 32 *H.* 8. *c.* 40. See 1 *Bott.* 13.

Freemen of the corporation of surgeons in London. 10. Freemen of the company and corporation of surgeons established by 18 *Geo.* 2. *c.* 15. who have been examined and approved pursuant to the rules of the company, so long as they exercise surgery, and no longer. Stat. 18 *Geo.* 2. *c.* 15. § 10.

Apothecaries. 11. Apothecaries using their art in, or within seven miles of *London*, being free of the Apothecaries' company (recognized by 6 & 7 *W.* 3. *c.* 4.), and having been examined and approved, and all persons using the said art in any other part of *England*, *Wales*, or *Berwick-upon-Tweed*, having served an apprenticeship of seven years according to the stat. 5 *Eliz.*, so long as they exercise the art and no longer. 6 & 7 *W.* 3. *c.* 4. § 2, 3.

Non-commissioned officers, &c. of militia. 12. Serjeants, corporals, drummers, and privates of militia, from the time of their enrolment until they be regularly discharged; but there is no exemption enacted for the officers of that force. 42 *Geo.* 3. *c.* 90. § 174.

Captains in the guards. 13. Captains in the guards. See 1 *Bott.* 9. note (*c*).

Yeomen in ordinary. 14. Yeomen in ordinary of the king's body guard. *Ibid.* *Rex* v. *Great Marlow*, 2 *East.* 245.

Officers in the army. 15. Officers of the army, navy, or marines, whether on whole or half-pay, from their liability to be sent on service. See *Rex* v. *Gayer*, 1 *Bott.* 9. *Sed qu.* as to those on *full* pay. See *Rex* v. *Warner*, 8 *T. R.* 375. 1 *Bott.* 11. as to incompatibility of offices.

Persons apprehending felons. 16. Persons apprehending and prosecuting to conviction any one guilty of privately stealing by night or day to the value of five shillings, in a shop, warehouse, coach-house or stable, or any accessaries before the fact to any of those offences, are entitled to a certificate, not transferable, whereby every such person shall be exempt from all parish and ward offices within the parish or ward wherein the felony shall have been committed. Stats. 10 & 11 *W.* 3. *c.* 23. § 2. and 58 *G.* 3. *c.* 70. § 2. See Vol. II. page 399.

Officers of the customs, tide-waiters, revenue officers. And lastly, officers of the customs, tide-waiters, exchequer, and all other revenue officers, both by reason, it should seem, of the incompatibility of the functions, and by reason of the exemption granted them by the king, who has power to exempt by patent, charter, or otherwise, not only from offices under the crown, but even from parochial offices. *Rex* v. *Warner*, 8 *T. R.* 375. *Raymond* v. *St. Botolph's, Aldgate*, 2 *Chan. Rep.* 196. 1 *Bott.* 8. *Cawthorne* v. *Campbell*, 1 *Anstr.* 216. See also *Rex* v. *Routledge*, 2 *Doug.* 531. But these exemptions granted by the prerogative are available only where there are a sufficient number of persons to serve the office, without recourse to the individuals so exempted. 8 *T. R.* 379, note (*a*). *Rex* v. *T. Clarke*, 1 *T. R.* 686. Dissenters scrupling to take the office, in regard of oaths or other

matters required by law in respect of such office, though not absolutely exempted, are permitted to execute it by deputy approved by such persons, and in such manner as the principal should have been approved. 1 *W. & M. sess.* 1. *c.* 18. § 7.

Subject to these exemptions, the magistrates may appoint such householders as they think meet. And the appointment is no longer limited of necessity to householders living in the parish or township; for

By stat. 59 *Geo.* 3. *c.* 12. § 6. "It shall be lawful for H. M.'s justices of the peace, in their respective special sessions for the appointment of overseers of the poor, upon the nomination and at the request of the inhabitants of any parish in vestry assembled, to appoint any person who shall be assessed to the relief of the poor thereof, and shall be a householder resident within two miles from the church or chapel of such parish, or where there shall be no church or chapel, shall be resident within one mile from the boundary of such parish, to be an overseer of the poor thereof, although the person so to be appointed shall not be an householder within the parish of which he shall be so appointed an overseer of the poor; and it shall be sufficient, in every such appointment, to describe the person appointed by his name and residence: Provided, that no person shall be appointed to, or be compellable to serve the office of overseer of the poor of any parish or place in which he shall not be a householder, unless he shall have consented to such appointment." 59 G. 3. c. 12. Power to appoint *non resident* overseers.

§ 7. Enacts, "that it shall be lawful for the inhabitants of any parish in vestry assembled, to nominate and elect any discreet person or persons to be *assistant* overseer or overseers of the poor of such parish, and to determine and specify the duties to be by* or them executed and performed, and to fix such yearly salary for the execution of the said office as shall by such inhabitants in vestry be thought fit; and it shall be lawful for any two of H. M.'s justices of the peace, and they are hereby empowered, by warrant under their hands and seals, to appoint any person or persons who shall be so nominated and elected to be assistant overseer or overseers of the poor, for such purposes, and with such salary, as shall have been fixed by the inhabitants in vestry; and such salary shall be paid out of the money raised for the relief of the poor, at such times and in such manner as shall have been agreed upon between the inhabitants in vestry and the respective persons so to be appointed; and every person to be so appointed assistant overseer shall be and he is hereby authorised and empowered to execute all such of the duties of the office of overseer of the poor as shall in the warrant for his appointment be expressed, in like manner and as fully, to all intents and purposes, as the same may be executed by any ordinary overseer of the poor; and every person or persons so appointed shall continue to be an assistant overseer of the poor until he or they shall resign such office, or until his or their appointment shall be revoked by the inhabitants of the parish in vestry assembled, and no longer; and it shall be lawful for the inhabitants of any parish, upon the nomination and election by them of an assistant overseer or overseers, to require and take security for the faithful execution of his or their office, by bond, with or without surety or sureties, and in such penalty as they

Assistant overseer may be appointed.

* *Sic.*

Security may be taken.

9 G. 3. c. 12. shall think fit; and every such bond shall be made to the churchwardens and overseers of the poor, and may, on any breach of the condition thereof, be put in suit by and in the names of the churchwardens and overseers of the poor for the time being, by the direction of the vestry or select vestry, for the benefit of the parish, in the manner herein-after provided."

§ 35. The same provision is extended to all townships, vills, and places having separate overseers, and maintaining their poor separately.

§ I. (5.) At what Time to be nominated, and by whom.

54 G. 3. c. 91. *To be nominated early in* Easter *week.*] But by stat. 54 *Geo.* 3. *c.* 91. the appointment of overseers of the poor, so directed by the said act of Queen *Elizabeth*, shall in every year be made on the 25th day of *March*, or within 14 days next after the said 25th day of *March*, in all and every the same manner as directed by the said act to be made in *Easter* week.

43 El. c. 2. Whether an appointment on a Sunday be valid. Notwithstanding the inference afforded by stat. 43 *Eliz. c.* 2. § 2. which requires the officers to meet once in a month on a *Sunday*, it is doubted whether an appointment made on a *Sunday* can, under any circumstances, be valid; at all events, unless it be shewn to have been made fairly, the fact of its having been made on a *Sunday* will incline the court of K. B. against it, as affording presumption that it was clandestine. *Rex* v. *Merchant and Allen*, 1 *Bott.* 29. *Rex* v. *Clerkenwell*, *Fol.* 4. 1 *Bott* 25. *Rex* v. *Butler and others*, 1 *Blac. Rep.* 649. 1 *Bott.* 28. *Rex* v. *Overseers of Bridgewater*, 1 *Cowp.* 139. 1 *Bott.* 29.

Nay, it has been repeatedly decided, that though ministerial acts may be done on a *Sunday*, judicial acts done on that day are void: and this is clearly a judicial act. *Waite* v. *Stokes*, *God.* 280. 1 *Nol. P. L.* 55. note (1). *Swan* v. *Broome*, affirmed on a writ of error in parliament, 3 *Burr.* 1595. *Rex* v. *Forrest*, 3 *T. R.* 78. 1 *Bott.* 17.

Where two or more appointments are made on the same *Rex* v. *Serle*, *E.* 12 *Ann.* 1 *Bott.* 24. 1 *Nol. P. L.* 54. 56. In this case two sets of overseers were certified upon the same day; whereupon it was objected that both of the appointments were for that reason void; as, where two informations on a penal statute are made on the same day, both are void. (*Hob.* 209.) *Sed non allocatur;* for although in some judicial proceedings the law considers the day as entire, and knows no fraction; yet in a bond and release, and many other things, that fiction does not hold, and these niceties should not be allowed to overthrow such orders.

If two appointments, each being of a sufficient number of overseers, are made on the same day, that which is prior in time is good, and the second void. *Rex* v. *Serle*, 1 *Bott.* 24. *Rex* v. *Merchant and Allen*, *Ib.* 29. 1 *Nol. P. L.* 54. 56.

If the appointment be not made within the time limited by stat. 54 G. 3. c. 91, but afterwards, it is not therefore void; *Or within one month after* Easter.] [But now by 54 *G.* 3. *c.* 91. within 14 days next after the 25th day of *March.*] *Rex* v. *Sparrow*, *H.* 13 *Geo.* 2. 2 *Sess. Ca.* 140. 2 *Str.* 1123. 1 *Bott.* 25. 1 *Nol. P. L.* 46. Upon a rule to shew cause why the appointment of overseers for the parish of *St. Margaret* in *Ipswich* should not be quashed, the objection was, that the justices, upon a *mandamus* directed to them, tested after *Easter*, had appointed overseers,

but that it was not within the month after *Easter*, but afterwards, and that consequently the appointment was void. But by *Lee* C.J. who delivered the opinion of the Court; As the justices are punishable by the act for not doing their duty, it would be a very hard construction to make the appointment itself void, for it would subject the parish to very great inconveniences, for a thing which it is not in their power to prevent. To interpret an act of parliament, we must consider the mischief to be remedied, the remedy provided, and the true reason of that remedy. In this case, the defect is, the want of a proper officer to take care of the poor. The remedy is, that the justices shall appoint overseers, and that within such a time. Now the justices have neglected their duty, in not appointing overseers within the proper time, and by the act have forfeited *5l.*, but that doth not make such appointment void. Were it the express direction of the act, that they should appoint in that and no other time, it would be otherwise; but here the statute is only directory, and a penalty inflicted on the justices for not following such directions.

the 43 Eliz. c. 2. statute is only directory.

But if one appointment have been made and not set aside by any regular authority, another made afterwards, even on the same day, is invalid, though made only in consequence of a reasonable claim of exemption by the first appointees; unless where the first appointees are regularly discharged by the sessions on appeal, in which event it seems that the magistrates may constitute others in the place of those so discharged: for the matter stands then as if the full number had not been appointed at first, in which case the justices have jurisdiction to make a supplementary appointment, and the lapse of the fourteen days after the 25th *March* does not, it is conceived, take away that jurisdiction. *Rex* v. *Great Marlow*, 2 *East.* 244. 1 *Bott.* 18. See also *Rex* v. *Morris*, 4 *T.R.*550. and *Rex* v. *Besland*, 1 *Bott.* 21.

Appointment once made cannot be changed or superseded, except on appeal to the quarter-sessions.

Under the hand and seal of two or more justices.] The appointment must be made by the justices out of quarter sessions; and the quarter sessions have no power to make it; of which the reason is, that the courts have the determination of appeals against the appointment, and if they had also power to make the instrument in the first instance, there could be no appeal, but *ab eodem ad eundem*. *Rex* v. *Flag and Chilmerton*, 1 *Sess. Ca.* 260. *Fol.* 7. 1 *Bott.* 16.

Sessions cannot appoint overseers, because appeal is given.

Where the parish is partly within a corporate jurisdiction, and partly without, though all the overseers when appointed, may act indiscriminately for the whole parish, yet their original appointment should be made by four justices, two for the part within the county at large, and two for the part within the corporate jurisdiction. *Rex* v. *Butler and another*, 1 *Bott.* 16. 1 *Nol. P.L.* 45.

Where the parish is part within and part without a corporation.

Appointment of overseers by two justices of the division where *W.* lay, without saying that *W.* was in the corporation of *S.*, or what county, is ill. *Rex* v. *Holditch*, 1 *Bott.* 4. 1 *Nol. P. L.* 53.

In some of the ancient statutes, not now in force, as particularly the 22 *H.* 8. *c.*12., the justices were required to *divide* themselves, for the better execution of the regulations concerning the poor. And thence came the clause in the subsequent statutes, that the justices *of the division* were to do such and such things. But as there is no law at present which requires them to *divide* for the aforesaid purposes, there is properly no *division* in the sense which

22 H. 8. c. 12.

Justices of the *division.*

the statutes intended; and consequently it cannot be necessary to set forth now, that the justices *are in or near the division.*

§ I. (6.) Of Stat. 13 & 14 C. 2. c. 12. for appointing Overseers in Townships or Villages.

This statute extends to *all* counties.

And many other counties in England *and* Wales.] In the case of *Skillington* v. *Norton*, *T.* 27 *C.* 2. 2 *Lev.* 142. 1 *Nol. P. L.* 10., it was held, that although other counties in general are here mentioned in the recital, yet the statute doth not extend to any other counties but those expressly named, none others being specified in the enacting part.

But afterwards, in the case of *Dolling* v. *Stokelane*, *H.* 11 *Ann. Fol.* 98. *Fort.* 219. 1 *Bott.* 35. 1 *Nol. P. L.* 10., it was held by the whole Court, that by reason of the words [*and many other counties in* England *and* Wales] the act is general, and extends to other counties than those named in the act, otherwise it would not extend to one county in *Wales.*

And in the case of *Clifton* v. *Churcham*, *H.* 12 *Geo.* 2. 1 *Nol. P. L.* 10., it was adjudged, that the act extended to all counties, being equally beneficial to all; and that the counties there specified are mentioned only as instances. And *Lee* C. J. said, that so it was determined, upon great debate and consideration, in the aforesaid case of *Dolling* v. *Stokelane;* which case hath been ever since adhered to. *Andr.* 314. And he expressly denied the case in 2 *Lev.* 142. to be law.

By reason of the largeness of the parishes cannot reap the benefit of the act of 43 *Eliz.*] The phrase, that a parish *cannot* reap the benefit of the statute "does not mean that it is *absolutely impossible* for them to maintain their own poor as a parish, for that would not be the case even if the parish were 100 miles in circumference; but that it is *inconvenient* for them so to do." *Rex* v. *Leigh*, 3 *T. R.* 746. 1 *Bott.* 58. 1 *Nol. P. L.* 27. If this inconvenience be trifling, which it will probably be considered where the parish has, immemorially, or until a recent and unnecessary alteration, maintained its own poor collectively and integrally out of one fund for all its component districts, the parish is capable of reaping the benefit of 43 *Eliz.*, and ought not to be divided; but where the districts have maintained their respective poor from distinct funds immemorially, as from the date of the 13 & 14 *Car.* 2., (or even from a later date if increase of population or other changes made it really inconvenient to continue the union,) or where the court of K. B. with knowledge of the facts, has directed a separation, there the parish is considered incapable of reaping the benefit of 43 *Eliz.*, and the townships become entitled to separate overseers. Thus, where all the townships of a parish have always maintained their poor collectively as one parish, with one rate, one workhouse, and two overseers appointed for the whole, who superintend the workhouse alternate weeks, there, although such overseer have made his levies and payments within his own division, yet if each have always brought the surplus in his hands at the year's end into a common account, the parish, under these arrangements so long established, has been considered quite capable of conveniently maintaining its poor without sub-division. *Rex* v. *Newell*, 4 *T. R.* 266. 1 *Bott.* 60.

1 *Nol. P.L.* 16,17,18.22,23. *Rex* v. *Justices of Middlesex,* 1 *Bott,* 39. 1 *Nol. P.L.* 17. *Peart* v. *Westgarth,* 3 *Burr.* 1610. 1 *Bott,* 42. 1 *Nol. P.L.* 17. 19. So although there have been overseers acting separately for the different townships from a time even preceding the date of 13 & 14 *Car.* 2., yet, if the maintenance of the poor has been from a joint fund, the parish is considered capable of supporting its poor undivided. *Rex* v. *Newell, ante,* p.16. *Rex* v. *Uttoxeter, Doug.* 346. *Cald.* 84. 1 *Bott,* 46. 1 *Nol. P.L.* 16, 17, 20.22, 23. 25. Nor does it make any difference that this joint fund is separately raised within each township in proportions fixed upon by the sessions on a reference to them from the townships themselves. *Rex* v. *Newell, ante,* p.16. Even the fact of their having been usually *more than four* overseers for all the townships from the date of 13 & 14 *Car.* 2. to the present time, though material, as affording an inference that the parish could not enjoy the benefit of 43 *Eliz.* which allows *only four,* yet is not decisive, where there has been always but one fund for all. *Rex* v. *Sir Watts Horton, Bart. and another,* 1 *T. R.* 374. 1 *Bott,* 54. 1 *Nol. P. L.* 12. 18. 26. 28. 37. *Rex* v. *Newell, ante* p.16. The maintenance of the poor out of a common fund, from a date earlier than the statute 13 & 14 *Car.* 2. until seventy or more years after the statute, is a circumstance so strong in favour of the collective mode of maintenance, that even the actual existence of a separate establishment, with separate funds and overseers for the last forty-years, or for any terms of less than sixty years, will not entitle the townships to a continuance of distinct overseers, unless some great change has taken place in the population or other circumstances of the place, however peaceable may have been the acquiescence of all the districts, and however regular the separation in point of form. *Peart* v. *Westgarth,* 3 *Burr.* 1610. 1 *Bott,* 42. *Rex* v. *Watson,* 7 *East,* 214. 1 *Bott,* 714. 1 *Nol. P. L.* 25. 27. 36. *Rex* v. *Newell, ante,* p. 16. *Rex* v. *Uttoxeter, supra.* See also stat. 59 *G.* 3. *c.* 95. *post,* p. 19. Nay, the confirmation by the court of K.B. itself, of the separate appointments, or even the *mandamus* of that court, where the ancient usage, from the date of 13 & 14 *Car.* 2. had been to maintain the poor from a joint fund, will not be an authority for the continuance of a separate establishment, resorted to within sixty years before stat. 59 *Geo.* 3., unless the question whether the parish was unable conveniently to maintain the poor from a joint fund, appears to have been raised at the time of such confirmation or *mandamus.* Nor is a parish entitled to a separation, merely because its different districts lie each in different jurisdictions or even counties. *Rex* v. *Uttoxeter, supra, and see the direction of Graham* B. *to the jury in Lane* v. *Cobham,* 7 *East,* 2, 3. 1 *Bott,* 705. *Rex* v. *Gordon,* 1 *B. & A.* 524. *Rex* v. *Palmer,* 8 *East,* 416. *Case of St. Botolph. Note to Rex* v. *Newell,* 1 *Bott,* 63. *and see* 43 *Eliz. c.* 2. § 8, 9. *ante,* p. 3.

On the other hand, where the district is extra-parochial, or where, being part of a parish, it has maintained its own poor on a distinct account "time out of mind," or for sixty or seventy years, and before for any thing that appears to the contrary, or only from the time of 13 & 14 *Car.* 2., or from a still more modern date, if change of circumstances required the separation, it has a clear right to a distinct set of overseers. *Case of St. Botolph,* 1 *Bott,* 63. *notis.* *Rex* v. *Leigh,* 3 *T. R.* 746. 1 *Bott,* 58. *Rex* v.

Walsall, 1 *Nol. P. L.* 34. 36. 2 *B. & A.* 157. *Rex* v. *Palmer*, and *Lane* v. *Cobham*, *ante*, p. 17.

Rex v. *Walsall*, *M.* 59 *Geo.* 3. 2 *B. & A.* 157. The two districts of which a parish consisted, had, from the 43 *Eliz.* down to the 13 & 14 *C.* 2., maintained their poor jointly, and, at the time of the passing of the latter act, agreed to separate in the maintenance of their poor, and that separate overseers should be appointed, upon condition that the rateable property in the parish, whether situated in the one or the other district, should be rated where the occupiers resided. In consequence of that agreement, they had ever since uniformly maintained their own poor separately, and, had had separate overseers, constables, &c. The Court held, that this clearly shewed, that the parish at the time of the agreement, could not reap the full benefit of the statute of *Eliz.*, and that, therefore, the separation of the two districts was valid, and that an appointment of overseers for the whole parish was now bad. It was held also, that the agreement consisted of two distinct parts, and that the invalidity of the latter part, as to rating property not situate within the district rated, did not affect the question on the former part. *Bayley* J. observed, that the case of *Rex* v. *Palmer*, 8 *East*, 416. only decided that where a parish has, with the consent of all its districts, re-united itself, that re-union is valid in law.

And where one or more, but not all, of several townships composing a parish, have obtained a separate appointment by *mandamus*, or have been accustomed to maintain their poor from separate funds, under circumstances authorising such separation, and the remaining townships have maintained their poor jointly, every one of them has a right to a separate appointment also: See *Rex* v. *Sir Watts Horton*, *ante*, p. 14: for the circumstances prove the inability of the parish to maintain its poor as a parish, that is, collectively out of one fund. The habitual appointment of more overseers than four, has likewise (though not absolutely decisive in favour of a separate appointment, where there was clear proof of convenient maintenance by all the townships from a single fund) been held, where actual necessity requires such a number of officers, to furnish a strong argument for division, as shewing that the parish could not, as a parish, enjoy the benefit of 43 *Eliz.*, which allows only four overseers to each fund. *Rex* v. *Newell*, *ante* p. 16. *Rex* v. *Sir Watts Horton*, *ante*, p. 17.

It was at one time supposed, that parishes which were in a condition to receive the benefit of 43 *Eliz.*, at the time of 13 & 14 *Car.* 2., ought not to be divided, by reason of any thing which may have happened since. *Rex* v. *Justices of Middlesex*, 1 *Bott*, 39. *Vide per Dunning*, *arguendo*. *Rex* v. *Uttoxeter*, 1 *Doug.* 348. *et per* Ld. *Kenyon in Rex* v. *Leigh*, 3 *T. R.* 747. But it is now determined, that the statute of *Car.* 2. did not oblige districts then immediately to adopt a mode of maintenance for their poor, from which they should not afterwards be at liberty to depart; and that therefore, if from increase of population or other cause, a parish, which at the time of stat. 13 & 14 *Car.* 2., enjoyed the benefit of 43 *Eliz.* as a parish, has since become incapable of conveniently reaping that benefit, distinct appointments may be made for its component townships. *Per Buller* J. and *Ashurst* J.

in Rex v. *Leigh*, 3 *T.R.* 748. *Et vide per Buller* J. *in Rex* v. *Sir Watts Horton*, 1 *T.R.* 376, 377. See also *Peart* v. *Westgarth*, 3 *Burr.* 1610.

And the principle of this determination has been followed in a very recent statute, 59 *G.3. c.* 95. (*a*), respecting towns corporate or franchises, which after reciting in its preamble, that various such towns, situate within one or more parish or parishes, and not co-extensive therewith, have, for a long time past, been separately assessed from the parish or parishes in which they are situate, and overseers of the poor for such town or franchise have been appointed distinct and apart from the overseers of the poor appointed for such parish or parishes: which have, in many cases, been made without sufficient authority, and yet, by reason of the long continuance of the said separation, the towns corporate or franchise cannot now be re-united to the parish or parishes in which they are situate without manifest inconvenience and hardship: enacts, that after the passing of this act all such separation of towns corporate or franchises from the parish or parishes in which they are situate, together with the separate and distinct appointment of overseers of the poor, shall be deemed and taken to be lawful to all intents and purposes whatsoever, in the same manner as if the said separation or division had taken place under the authority of an act made in the forty-third year of the reign of queen *Elizabeth*, intituled *An Act for the relief of the poor:* Provided always nevertheless, that nothing in this act contained shall render legal or confirm any separation of a town corporate or franchise from the parish or parishes in which such town corporate or franchise is situate, in respect to the maintenance of the poor or the appointment of overseers of the poor, in any case where it shall appear that such separation has commenced within sixty years before the passing of this act.

59 G. 3. c. 95. "*for confirming* ancient separations *of towns corporate from parishes, in regard to the maintenance of the poor.*"

Separation of towns from parishes, and distinct appointment of overseers lawful.

43 El. c. 2. But with respect to the poor, such separation must not have commenced within 60 years.

It is equally clear, in the converse, that the townships of the same parish, though separated under the stat. of *Car.* 2., are at liberty, if decrease of population or other change of circumstances make it desirable, to return by agreement to the collective system of 43 *Eliz. Rex* v. *Palmer*, 8 *East*, 416. *Lane* v. *Cobham*, 7 *East*, 1.

And this re-union by agreement is equally valid, whether the townships before and at the date of the statute of *Car.* 2., maintained their poor jointly, continued so united until more than a

(*a*) This statute is loosely worded; but it must be understood (as it should seem) to mean only, that those places which have actually *maintained* and *relieved* their own poor separately, may continue to do so, and not that places which have usually raised a separate quota toward the *general assessment* are at liberty to apply that quota henceforth to the separate maintenance of their own poor, without reference to the parish at large. With respect to the separate appointments of overseers, no enactment seems to have been requisite, as the justices and head officers of corporate jurisdictions were directed by 43 *Eliz.* to deal separately in such matters, though the overseers appointed by them by their franchise, and the overseers appointed by the county justices for the rest of the parish, were, and still are, bound, when so respectively appointed, to act conjointly for the whole parish. And in prescribing that the separation shall be deemed lawful as if it had taken place, under the authority of 43 *Eliz.*, the drawer of the act seems to have meant stat. 13 & 14 *Car.* 2. which does authorize certain separations, and not that of *Eliz.* which authorizes none.

century afterwards, and then divided; or whether from the date of the statute *Car*. 2. until their agreement to re-unite, they have been constantly separate. The Court, therefore, will not disturb by appointment of separate overseers, a re-union thus effected, after a duration of thirty years. Nor probably, though much more recent. On the other hand, though there should be affidavits on behalf of one or more townships, that the parish might now, by re-union, reap the benefit of 43 *Eliz.* it does not seem likely, that the Court would grant a *mandamus* against the wish of any other of the townships, to appoint overseers for the whole parish collectively. *Rex* v. *Leigh*, 3 *T.R.* 746. 1 *Bott*, 58. Nor is it decided, that one or more townships may not re-unite, leaving other townships of the same parish still distinct; but no partial union of this kind seems to have been contemplated in either of the statutes.

Thus was the maintenance of the poor, by the appointment of overseers to assist them, secured in all cases where the parish was capable, either collectively or by subdivision, of bearing that burden unassisted. But as there were also some parishes, so small as to be incapable, even collectively, of raising a sufficient fund, stat. 43 *Eliz. c*. 2., provided by its 3d section, that in those cases other parishes of the neighbourhood might be rated to their aid; *vide post*, § II. Poor Rate, (10.), and more modern statutes have provided still further for the accommodation of small parishes, by authorizing two or more to unite, for the maintenance of their poor. *Vide post*, § III. Relief, (4, 5). Stats. 9 *Geo*. 1. *c*. 7. 22 *Geo*. 3. *c*. 83. &c.

43 Eliz. c. 2. 54 G. 3. c. 91. Penalty on justices where no nomination of overseers.

By stat. 43 *Eliz. c*. 2. § 10. If in any place there shall be no such nomination of overseers as is before appointed, every justice of the division shall forfeit 5*l*. to the poor of such place, to be levied by the churchwardens and overseers, or one of them, by distress, by warrant from the sessions.

If in any place there shall be no such nomination as is before appointed] That is, in *Easter* week, or within one month after *Easter*; [but now by stat. 54 *Geo*. 3. *c*. 91. on the 25th day of *March*, or within fourteen days next after.] For the clause doth not suppose that no overseers at all are appointed within such place, but only not within such time; for the penalty is required to be levied by the *churchwardens and overseers*, or one of them.

Every justice of the division shall forfeit 5l.] This proceeds upon the supposition of the justices being obliged to divide; for in that case the appointment was to be by the justices in or near the division, and not otherwise: but now the justices at large are all equally concerned: and therefore it seemeth, that this penalty cannot now be levied on any particular justice. (*a*). But if in any place no overseer shall be appointed, a *mandamus* will go to the justices at large, to compel them to appoint. Vide *ante*, p. 14, 15.

43 El. c. 2. § 1. *ante*, p. 2. Mode of appointing.

The mode of appointing is next to be considered, with the form and execution of the instrument itself. The churchwardens require no specific appointment by the justices in order to give

(*a*) I incline to think that all are liable, as corporate officers certainly are. See the stat. 43 *Eliz. c*. 2. And *Rex* v. *Price*, *Cald*. 305. *Rex* v. *Skinn*, and *Rex* v. *Baker*, 1 *Bott*, 476. *Rex* v. *Crosse*, *Comb*. 289. *Rex* v. *Woodsterton*, 1 *Bott*, 403. *St. John* v. *St. John*, *Hob*. 78. Ed.

them the authority of overseers; for they become so by stat. 43 *Eliz.*, in virtue of their office of churchwarden. But the other overseers can become so, only by specific appointment: and this, as no usage, however ancient, will entitle the parishioners to elect them, must be made by the justices. *Rex* v. *Forrest*, 3 *T.R.* 138. 1 *Bott*, 17. 1 *Nol. P.L.* 54. In order to inform these magistrates what persons are to be found who may be fit to execute the office for the ensuing year, two justices ought to issue a precept to the high constable, directing him to require the petty constables that they enjoin all the overseers within their respective constablewicks to deliver in a list of qualified inhabitants within a certain time. Which precept may be in the following form:

Warrant for Returning Lists of Overseers.

County of ——— to wit. } To ——— gentleman, high constable of the hundred of ——— within the said county.

WE, two of his majesty's justices of the peace for the said county of ——— one whereof is of the quorum, *do hereby require you forthwith, upon your receipt hereof, to issue your warrants to all the petty constables within your said hundred, in the form or to the effect, according as upon this our warrant is indorsed. Given under hands and seals the ——— day of ———.*

The Form of the said High Constable's Warrant to the Petty Constable.

Staffordshire, Hundred of Cuttlestone East. } To the Constable of ———.

BY virtue of a precept from two of his majesty's justices of the peace in and for the said county of Stafford, (*one whereof is of the* quorum) *to me directed, you are hereby required immediately upon sight hereof to give notice to all and every the overseers of the poor within your constablewick, that they make out a list in writing of a competent number of substantial householders within their respective districts, and deliver in the same to the said justices and others his said majesty's justices of the peace for the said county, at a special sessions to be holden at ——— in ——— in the said county, on ——— the ——— day of ——— at the hour of ——— in the forenoon of the same day; to the end that out of the said list the said justices may appoint other overseers of the poor for the year then next ensuing. And you are hereby also required to give notice to all justices of the peace for the said county, residing in your constablewick, of the time and place appointed for holding the said special sessions. And be you then there, to certify what you shall have done in the premises. Herein fail you not. Given under my hand the ——— day of ——— in the year of our Lord ———.*

J. W. *high constable.*

The justices then, having made their selection, must put the

appointment in writing under their seals, which writing may be in the following form: *Rex* v. *Arnold*, 1 *Str*. 101. 1 *Bott*. 16.

Form of an Appointment of Overseers.

Staffordshire. } to wit. } *WE, two of his majesty's justices of the peace in and for the said county of* Stafford, *one of whom is of the* quorum, *do hereby nominate and appoint* A. B., Z. Y., C. D. *and* X. W., *being substantial householders of and in the parish* (or *township*) *of* E. *in the said county*, [*or*, if any of them be appointed under the statute 59 *Geo*. 3. *c*. 12. § 6. and 35. *ante*, p. 13, 14. then say, A. B., Z. Y., C. D., *being substantial householders of and in the parish of* (or *township*) *of* E. *in the said county, and* X. W. *a householder resident in the parish of* F., *in the same county*, (or *in the county of* ———,) *who has consented to this appointment*,] *to be overseers of the poor of the said parish*, (or *township of* E., *together with the churchwardens thereof, for the present year, according to the directions of the statute*, (if, a township, *the statutes*) *in that case made and provided. Given under our hands and seals, this* ——— *day of* ———.

E. M. (L. S.)
G. C. (L. S.)

17 G. 2. c. 33. But by a remedial clause, in stat. 17 *Geo*. 2. *c*. 38. it is enacted, § 8. that *the distress for the poor rate shall not be deemed unlawful, for any defect or want of form, in the warrant for the appointment of overseers.*

Staffordshire] The name of the county or other smaller jurisdiction for which the justices act, should be set forth in some part of the order, that the parish or township for which the appointment is made, may appear to be within their jurisdiction. For those who act under a jurisdiction given by act of parliament must shew that jurisdiction; since, in a matter of jurisdiction, the Court will intend nothing, *Rex* v. *Holbeck* in *Leeds*, *Burr*, *S. C.* 198. *Rex* v. *Stepney*, *Burr*. *S. C.* 23. *Rex* v. *Chilvers Coton*, 8 *T. R.* 178. *Rex* v. *Severn and Arnold*, *Say*. 278. 1 *Bott*, 4.

We, two, &c.] The act requires two at least: the number, therefore, whether two or more, must be shewn, that the appointment may appear to have been made by a competent jurisdiction; but provided there be more than one signature, the omission of the number in the body of the order is probably not material.

We, two of his majesty's justices] It would be insufficient for them to say, *We do hereby nominate*, without describing themselves as justices; for as none else are empowered, there would otherwise be no jurisdiction apparent. And this defect will not be cured even after confirmation of the original instrument on appeal, by calling them justices in the order of sessions: as they might have been justices at the time of making the order of sessions, and yet not at the time of making the original instrument. *Walton* v. *Chesterfield*, 5 *Mod*. 322. *Rex* v. *Woodford*, 1 *Bott*, 367.

Of the peace] It is not necessary to say, of the peace of *our lord the king*. But it seems insufficient to say merely *justices of the county*, without ascertaining them to be of the *peace*. 2 *Haw*. *c*. 8. § 32.; title Justices of the Peace, Vol. III.

In and for the county, &c.] *In the county* alone would not be

sufficient: And where the appointment is by magistrates acting for a limited jurisdiction, the justices should shew precisely on the face of the order to what liberty they belong. *Rex* v. *Dobbyn*, 2 *Salk.* 474.

The justices need not describe themselves as *dwelling in or near* the parish or division. *Rex* v. *Sparrow*, 2 *Session. Cas.* 140. 1 *Bott*, 25. 1 *Nol. P. L.* 53. *Rex* v. *Loxdale*, 1 *Bott*, 21.

One of whom is of the quorum.] It is not now strictly necessary that this should be stated; but it is still requisite that one of the justices *in fact be* of the *quorum*, except where there is but one justice of the *quorum* in the whole jurisdiction, in which case the acts of two justices are valid, though neither be of the *quorum*. See stats. 26 *Geo.* 3. *c.* 27., and 7 *Geo.* 3. *c.* 21.

Do hereby nominate and appoint A. B., Z. Y., C. D., *and* X. W. *&c.*] The usual and eligible way seems to be, to appoint all the overseers by the same instrument; but this is not indispensable, for though there must be more than one overseer appointed for a district, there is no law that says there shall be an appointment of two or more overseers by one instrument. *Rex* v. *Besland*, 1 *Bott*, 21. *Rex* v. *Morris*, 4 *T. R.* 550. 1 *Bott*, 23. *Per Lawrence* J. in *Rex* v. *Clifton*, 2 *East*, 168. 1 *Bott*, 24. If more than four be appointed, the instrument is invalid as to every one of the appointees. *Vide per* Ld. *Kenyon* C. J. *Rex* v. *Wymondham*, 6 *T. R.* 553.

Being substantial householders of and in the parish (or *township*) *of* E. *in the said county.*] Where any one of the overseers appointed is not such a householder, but is a householder resident out of the parish or township, (59 *Geo.* 3. *c.* 12. § 6. & 35. *ante.* 13. 14.) it is sufficient to describe the person appointed by his name and residence; but where he is resident within the parish or township, it seems still requisite to pursue the old form. In this case, "*principal inhabitants*," is an insufficient description. *Rex* v. *Sheringbrooke*, 2 *Ld. Raym.* 1394. 1 *Bott*, 4. *Rex* v. *Curle*, *cited* 1 *Bott*, 5. It is proper too to say, *householders in the parish of* E., or if the name of the parish, and of that parish only, have occurred before in the same instrument, then at least to say *householders there*. *Rex* v. *Weobly*, 2 *Str.* 1261. 1 *Bott*, 4. And the description of the appointees must be in the body of the appointment, and will not be sufficient if inserted only in a direction at the foot of it. *Rex* v. *Weobly*. If the place be a parish, it must be called a parish, and if a township it must be called a township, or a village, those being the terms used by the statute; or which is in common acceptation synonymous, a hamlet or vill. *Rex* v. *Morris*, 4 *T. R.* 550. 1 *Bott*, 23. These descriptions cannot be supplied by intendment, and are so strictly required, that the order will be void if the parish or township be designated as such only under an alias, as the precinct of the *Tower*, *otherwise called the parish of St. Peter ad vincula*. *Rex* v. *Severn & Arnold*, *Say.* 278. 1 *Bott*, 4. Where the appointment is for a township, it is not sufficient that the overseer appointed be a householder in the parish of which that township is a district; he must also, unless where the appointment is under 59 *Geo.* 3. *c.* 12. be a householder in that particular township: but if he be described in the appointment merely as a householder in the *parish*, he shall be intended a householder in the vill for which he is appointed. *Rex* v. *Morris*,

4 *T. R.* 550. 1 *Bott*, 6. The words, *in the said county*, are necessary to shew that the parish is in the same county for which the justices have previously stated that they are acting. *Rex* v. *Houlditch*, 1 *Bott*, 68.

Or, *and* X. W. *a householder resident in the parish of* F. *&c. who has consented to this appointment*] The stat. 59 *Geo.* 3. *c.* 12. § 6. & 35. in cases of appointments of out-dwellers under its provision, makes the name and residence a sufficient description of the persons; but as it provides that no out-dweller *shall be appointed* unless he *shall have consented to such appointment*, it seems proper to state this circumstance by way of shewing the jurisdiction.

To be overseers of the poor of the said parish (or *township*) *of* E.] The word *overseers* should be used. Where certain persons were appointed *to set the poor to work, &c.*, mentioning the several duties in the act, but were not in express terms appointed *overseers*, for this reason the nomination was quashed. *Rex* v. *St. George's*, 1 *Fort.* 320. 1 *Bott*, 4. 1 *Nol. P. L.* 53. If the overseers be all out-dwellers, so that the name of the parish or township has not before occurred, it must be stated here with its proper designations.

Together with the churchwardens thereof] These words though usual, are not indispensable; for "when overseers are once legally appointed, they are, by the operation of law, joined with the churchwardens of the parish for which they are appointed." *Rex* v. *Searle*, 1 *Bott*, 3.

For the present year] This form has been decided to be good; and is construed to signify, from the present time till the next season allowed by law for the appointment of overseers; and this is so, though "at this present time" the proper period has gone by; for the year here means the overseers' year. *Rex* v. *Sparrow*, 1 *Bott*, 25. *Rex* v. *Helling*, 3 *Burr.* 1905. 1 *Bott*, 28. The following forms have also on the same construction been sustained by the court: "for this present year 1766." *Rex* v. *Helling*, *ante.* "For one whole year." *Rex* v. *Great Marlow, Fol.* 5. *Rex* v. *Jones*, 1 *Bott*, 27. "For one year next ensuing." *Rex* v. *Burder*, 4 *T. R.* 778. 1 *Bott*, 30. "For one year next ensuing the date hereof." *Rex* v. *Stubbs*, 2 *T. R.* 395. 1 *Bott*, 30.

According to the direction of the statute (or, if it be a township,) *the statutes.*] The right of appointing overseers for parishes, is founded, as we have seen, on stats. 43 *Eliz. c.* 2. § 1. 54 *Geo.* 3. *c.* 91., 59 *Geo.* 3. *c.* 12. § 6., and 17 *Geo.* 2. *c.* 38. § 3. And for townships, on the same enactments coupled with the provisions of 13 & 14 *C.* 2. *c.* 12. § 21, 22. and of 59 *Geo.* 3. *c.* 12. § 35.

Given under our hands and seals this 25th day of March [or *within fourteen days after.*]

E. M. (L. S.)
G. C. (L. S.)

In order to authorise the appointment, it has been generally considered requisite, not only that the justices sign and seal, but that their signing and sealing be in each other's presence; for the function is not ministerial merely, like the allowance of a rate, but judicial; and it is fit therefore that the magistrates confer, and that the result of their conference be the ground of their detemination. Indeed it is a general rule that where a statute requires

the concurrence of two magistrates, they should both act together. *Rex* v. *Arnold*, 1 *Str.* 101. 1 *Bott*, 16. *Rex* v. *Great Marlow*, 2 *East*, 244. 1 *Bott*, 18. *Rex* v. *Forrest*, 3 *T. R.* 38. 1 *Bott*, 17.

But from the analogy of a more recent case, respecting a warrant signed by commissioners of bankrupts, it may be collected that the spirit of this rule is satisfied if the magistrates have in fact conferred and agreed, leaving nothing to be done but the acts of signing and sealing, though those acts afterwards be done by them asunder. *Battye* v. *Gresley and others*, 8 *East*, 327.

17 G. 2. c. 38. On an overseer's dying, &c. two justices to choose another.

Stat. 17 *Geo.* 2. *c.* 38. § 3. Enacts, that if any overseer shall die, or remove from the place for which he was appointed, or become insolvent, before the expiration of his office, on oath thereof made, it shall be lawful for two justices of the peace to appoint another overseer in his stead, who shall continue in office until new overseers are appointed; and if any overseer shall remove as aforesaid, he shall, before such removal, deliver over to some churchwarden, or other overseer of the same place, his accounts verified as aforesaid, with all rates, assessments, books, papers, sums of money, and other things concerning his office, under the like penalties as are inflicted by this act on an overseer refusing to do the same after the expiration of his office; and if any overseer shall die as aforesaid, his executors or administrators shall, within forty days after his decease, deliver over all things concerning his office to some churchwarden, or other overseer of the same place; and shall pay out of the assets left by such overseer, all sums of money remaining due, which he received by virtue of his said office, before any of his other debts are paid and satisfied.

Overseer removing, shall deliver his accounts to the churchwardens, &c.

Executors of overseers to account in 40 days.

Supplementary appointment.

When the full number has not been appointed by the first instrument, it seems competent to the justices to add the rest by one or more supplementary appointments. *Rex* v. *Besland*, 1 *Bott*, 21. *Rex* v. *Morris*, 4 *T. R.* 550. 1 *Bott*, 23. *Et vide per Lawrence*, J. *Rex* v. *Clifton*, 2 *East*, 177.

Lastly, Every overseer who continues living solvent and resident, will remain in office, until the expiration of the period limited for the appointment of the next year's overseers. *Rex* v. *Sparrow*, 1 *Bott*, 25. 1 *Nol. P. L.* 53. But not longer, even though no successors be appointed; nor, as it seems, does the authority even of the churchwardens, as overseers of the poor, continue beyond the expiration of the overseers term, though "liable to be revived by the appointment of new overseers, if the churchwardens continue in office beyond the overseers regular year." *Vide* 1 *Nol. P. L.* p. 59., *vide etiam per* Ld. *Ellenborough* C. J. *Rex* v. *St. Margaret's, Leicester*, 8 *East*. 333.

§ I. (7.) Of the Remedies, as well to obtain as to enforce or avoid an Appointment, and herein of Appeals, &c.

The next matters to be considered are, the remedies as well (1) to obtain an appointment where none has been made within the proper time, as (2) to enforce (A) or to avoid (B) an appointment already made. A. B.

1. If the magistrates will not make an appointment within the proper time, a *mandamus* may be obtained from the court of

K. B. to compel them. 1 *Nol. P.L.* 44. *ante*, p. 14, 15. See also 43 *Eliz. c.* 2. § 10. *ante*, p. 20.

A. 2. (A) If the magistrates have already made an appointment, it may be enforced against the overseers themselves, by indictment (*a*), if they refuse to take the office upon them; or generally (*b*) by obtaining a confirmation from the court of K. B.

B. 2. (B) On the other hand, when the object is to avoid the appointment, that object may be obtained not only in defending an indictment for refusal of the office, or in bringing an action of trespass or replevin, for taking of a distress under a rate made by illegal officers, or in opposing the motion for the confirmation, but the appointment may be directly impeached either by the overseers themselves, *or by any of the parishioners*, *Hilton* v. *Pawle*, *Cro. Car.* 92. 1 *Bott*, 32. *Lane* v. *Cobham*, 7 *East*, 1. 1 *Bott*, 705. *Rudd* v. *Foster*, 4 *Mod.* 157. 1 *Bott*, 34. *Tracy* v. *Talbot*, 2 *Salk.* 532., in any of the following ways:

43 El. c. 2. Appeal. 1. Directly by an appeal against the appointment itself, under 43 *Eliz. c.* 2. § 6. which provides, that if any person shall find himself aggrieved by any act done by the said justices, he may appeal to the general quarter sessions, whose order therein shall bind all parties. See also stat. 17 *Geo.* 2. *c.* 38. § 4. *Rex* v. *Great Marlow*, 2 *East*, 244. 1 *Bott*, 71. 1 *Nol. P. L.* 56. (17 G. 2. c. 38.)

Though the stat. of *Eliz.* did not confine the appeal to the next sessions, yet the statute of 17 *Geo.* 2. *c.* 38. § 4. imposed that limitation, at the same time allowing costs to the successful party. It has been supposed, that the appeal still lies under the stat. of *Elizabeth*, to any subsequent session; and that the only disadvantage of not appealing to the next sessions, as is directed by the statute of *Geo.* 2., is the waver of the costs which this latter statute allows. But it is now decided, that this provision of *Eliz.* was repealed by the stat. of *Geo.*, and that the appeal must in all cases be to the next quarter sessions after the party was aggrieved. *Rex* v. *Coode and others*, 1 *Bott*, 281. *Rex* v. *Micklefield*, 1 *Bott*, 284. 2 *Nol. P. L.* 397. 3*d Edit.*

The 'next' sessions will always mean the next 'possible' sessions. See *Rex* v. *Justices of Sussex*, 15 *East*, 207. *Et*

(*a*) The remedy against an overseer refusing to take the office upon him is by indictment. *Rex* v. *Jones*, 2 *Str.* 1146. 2 *Sess. Ca.* 187. 1 *Bott.* 337. 1 *Nol. P. L.* 38. He is overseer completely by the appointment under the hand and seal of the magistrates, until on appeal, the sessions have allowed his excuse, or until the court of K. B. have pronounced his appointment void; but its invalidity seems a good answer to such an indictment, and may be taken advantage of by demurrer, where its insufficiency appears on the face of the indictment itself. *Rex* v. *Pardy*, 1 *Bott.* 339. *Rex* v. *Burder*, 4 *T. R.* 778. 1 *Bott.* 30. It would probably be necessary on such an indictment to prove that he had received notice of his appointment: for such notice is requisite even to warrant a conviction before two justices in penalties under 43 *Eliz.* for neglect of his office, where notice seems the less important, inasmuch as such a conviction must allege the defendant to have accepted the office, which implies that he must have had notice. *Rex* v. *Harman*, 1 *Bott*, 335, *post*, p. 31.

(*b*) The law has likewise permitted the confirmation of the appointment by the court of K. B. on motion to that effect, when it is brought up by *certiorari*. But it ought not to be brought up, nor, if brought up, will the Court confirm it, until one session has past since the appointment was made, so as to give to the parties interested an opportunity of appealing against it. *Rex* v. *Houlditch*, 1 *Bott*, 68.

per Ld. *Ellenborough* C. J. in *Rex* v. *Justices of Essex*, 1 *B. & A.* 210. And it will be advisable for him to serve each of the justices who have made the appointment, and each of the other parish officers with whom he is nominated to act, with a copy of the notice of appeal, containing the grounds of his appealing, which must be done on or before the last day allowed for notices of appeal, by the practice of the sessions for the county, where the case is to be heard. If the objection be, that the appointment was made by persons who were not justices, no appeal is necessary, for that is a nullity; but if the party do appeal and call the persons in question in his notice, by the title of justices, he concludes himself, and cannot be heard to urge that they are not so; though an appointment by persons not justices is void *ipso facto*, without appeal, yet, where the defect of jurisdiction is merely, that the justices are neither of them of the *quorum*, the proper way to obtain the avoidance of the appointment is by appealing. *Rex* v. *Fisher*, and *Rex* v. *Towil*, *Cald.* 135. 1 *Bott*, 69. *Albrighton* v. *Skipton*, 1 *Str.* 300. 1 *Nol. P. L.* 56.

Appointment by persons calling themselves justices, but not being such, a nullity. Their jurisdiction may, however, be admitted. Sessions may look into the jurisdiction of justices.

2. The appointment may likewise be questioned collaterally in an appeal against an order of removal made to an extra-parochial place having no officers, or to a township or other minor district, when it ought to have been made to the parish at large; or, probably, to a parish at large when it ought to have been to one of the townships in that parish.(a) *Rex* v. *Denham*, *Burr. S. C.* 35. *Dolting* v. *Stokelane*, *Fort.* 219. 1 *Bott*, 35. *Rex* v. *Tamworth*, *Cald.* 28. 1 *Bott*, 45. *Rex* v. *Swalcliffe*, *Cald.* 248. 2 *Bott*, 690. Another mode, the converse of the last, is an appeal against an order of removal made from a wrong district. *Forest of Dean* v. *Parish of Linton*, 2 *Salk.* 487.

On any of these appeals to the sessions, that court may, if it have any doubt, reserve a case for the opinion of the court of K. B. Besides which, a party having a right of appeal, may either, without exercising that right, or after having exercised it unsuccessfully, remove the appointment into the court of K. B. by *certiorari*, and move that it be quashed, at any time before the expiration of the year for which it was made; but, it seems, not afterwards. Upon which the Court will go into the consideration, not only of defects on the face of the appointment, but of extrinsic matters appearing by affidavit. *Rex* v. *Great Marlow*, 2 *East*, 244. 1 *Bott*, 71. See *Rex* v. *Butler*, 1 *Blac. Rep.* 649. *Rex* v. *Standard Hill*, 4 *M. & S.* 378.

Rex v. *Standard Hill*, *M.* 56 *Geo.* 3. 4 *M. & S.* 378. An appointment by two justices of overseers of the poor, may be removed into the court of K. B. by *certiorari*, without appealing against it to the quarter sessions, and the Court will go into the question upon affidavit, whether the place for which the appointment is made, be a township or vill, and if it appear by the affidavits that it is not, and be not stated to be such, or that it is reputed to be such, the Court will quash the appointment.

Appointment of overseer removed into B. R. by *certiorari*. Question, whether a township or vill, gone into in *B. R.* on affidavit.

(a) Nor can *Rex* v. *Kirby Stephen*, *Burr. S. C.* 664. 1 *Bott*, 44. be considered as an authority against this position: for the removal and delivery of the pauper were to the proper district, *i. e.* the township, though it was misdescribed in the order of removal, as a parish, from the accident of its having the same name as the parish in which it was comprehended.

Lastly, the propriety of an appointment may be questioned by motion for a *mandamus* to be directed to two justices of the neighbourhood, commanding them to appoint overseers for the proper district. See *ante*, p. 14. 15. This is a writ of right; but according to Mr. *Nolan*, [1 *Nol. P. L.* 37. *note* (4)], it is not applicable to improper appointments for extra-parochial places. *Rex* v. *Rufford*, 8 *Mod.* 39. 1 *Bott*, 36. 334. *Rex* v. *Welbeck*, 1 *Bott*, 38. *Rex* v. *Sir Watts Horton*, 1 *T. R.* 374. 1 *Bott*, 54. *Rex* v. *Justices of Bedfordshire*, *Cald.* 167. 1 *Bott*, 48. *Rex* v. *Justices of Peterborough*, *Cald.* 238. 1 *Bott*, 50. *Rex* v. *Justices of Middlesex*, 1 *Bott*, 39.

Having thus considered the appointment of overseers and the remedies for enforcing or avoiding such appointment, it will be proper now to treat

§ I. (8.) Of the Constitution and Incidents of the Office.

in respect,

(*a*) *Of the jurisdiction belonging to it.*
(*b*) *Of the general duties and powers annexed to it.*
(*c*) *Of the privileges for its support.*
(*d*) *Of the remedies against its abuse.*

(*a*) *Of the Jurisdiction belonging to it.*

Jurisdiction.

Where a parish or township extends into more counties than one, or part lies within the liberties of a corporate place and part without, by stat. 43 *El. c.* 2. § 9. "*The said churchwardens and overseers or most part of them, of the said parishes that do extend into such several limits and jurisdictions, shall, without dividing themselves, duly execute their office in all places within the said parish, in all things to them belonging.*"

43 El. c. 2.

All acts which the churchwardens and overseers have power to do, (see 43 *El. c.* 2. § 1. 5. 9.) are done with a sufficient jurisdiction if done by a majority. *Rex* v. *Beeston*, 1 *Bott*, 420. This body thus far resembling, though not technically amounting to a corporation, *Doe* dem. *Grundy and others* v. *Clarke*, 14 *East*, 488.

17 G. 2. c. 38. Power of overseers where there are no churchwardens.

By stat. 17 *G.* 2. *c.* 38. § 15. Overseers of the poor, within every township or place where there are no churchwardens, shall from time to time do, perform, and execute all and every the acts, powers, and authorities, concerning the relief of, and other matters and things relating to the poor, as churchwardens and overseers of the poor may do, perform, and execute by this act, or any former statute concerning the poor; and shall lose, forfeit, and suffer all such pains and penalties for neglect, abuse, or non-performance thereof, as churchwardens and overseers of the poor are liable to, by virtue of this or any former statute concerning the

59 G. 3. c. 12.

poor. And they have the same jurisdiction as to the acts and duties required by stat. 59 *G.* 3. *c.* 12. § 35.

2 & 3 Ann. c. 6.

The stat. 2 & 3 *Ann. c.* 6. § 3. respecting apprentices to the sea-service, had also given to the overseers of townships, all the powers which it entrusted to churchwardens or overseers of a parish: and the statutes of 51 *G.* 3. *c.* 80. and 54 *G.* 3. *c.* 107. legalise the execution of parish indentures and certificates in certain instances where the execution would otherwise have been defective in respect of the number or authority of the officers

executing it. (See Vol. I. tit. **Apprentice**, and *post*, § XIV., tit. **Settlement by Apprenticeship** and **Acknowledgment by Certificate.**)

The overseers have by law the custody of the instruments by which they are appointed. *Rex* v. *Stoke Golding, M.* 1817. 1 *B. & A.* 173. 1 *Phill. Ev.* 435. 6*th edit.*

(*b*) *Of the general Duties and Powers annexed to it.*

The general duties and powers of overseers are declared by stat. 43 *Eliz. c.* 2. § 1. & 2. which enact that the churchwardens and overseers, or the greater part of them, shall take order from time to time, by and with the consent of two or more such justices of peace as is aforesaid, for setting to work the children of all such whose parents shall not, by the said churchwardens and overseers, or the greater part of them, be thought able to keep and maintain their children; and also for setting to work all such persons, married or unmarried, having no means to maintain them, and use no ordinary and daily trade of life to get their living by: and also to raise weekly or otherwise (by taxation of every inhabitant, parson, vicar and other, and of every occupier of lands, houses, tithes impropriate, propriations of tithes, coal-mines, or saleable underwoods in the said parish, in such competent sum and sums of money as they shall think fit,) a convenient stock of flax, hemp, wool, thread, iron and other necessary ware and stuff, to set the poor on work: and also competent sums of money for and towards the necessary relief of the lame, impotent, old, blind, and such other among them, being poor and not able to work, and also for the putting out of such children to be apprentices, to be gathered out of the same parish, according to the ability of the same parish, and to do and execute all other things, as well for the disposing of the said stock as otherwise concerning the premises, as to them shall seem convenient.

43 El. c. 2. § 1. & 2. General duties and powers.

Who shall be taxed towards the relief of the poor.

A convenient stock shall be provided to set the poor on work.

§ 2. Which said *churchwardens* and *overseers* so to be nominated, or such of them as shall not be lett by sickness or other just excuse, to be allowed by two such justices of peace or more as is aforesaid, *shall meet together at the least once every month in the church of the said parish, upon the* Sunday, *in the afternoon after divine service,* there to consider of some good course to be taken, and of some meet order to be set down in the premises. See the rest of this §, p. 31. (*d*).

43 El. c. 2. The overseers shall meet once every month.

(*c*) *Of the Privileges for its Support.*

For protection of the churchwardens and overseers against vexatious actions, which the execution of their various duties seemed likely to bring upon them, the legislature passed the several enactments of 43 *Eliz. c.* 2. § 19. 7 *J.* 1. *c.* 5. 21 *J.* 1. *c.* 12. 17 *Geo.* 2. *c.* 5. § 34. 17 *Geo.* 2. *c.* 38. § 8. 10. and 24 *Geo.* 2. *c.* 44. § 6, 7, 8. giving various advantages to parish officers in such actions with respect to forms of pleading, to costs, and other important matters.

Privileges, &c.

By stat. 7 *J.* 1. *c.* 5. If any action shall be brought against any *justice of the peace* or *constable* (and by 21 *J.* 1. *c.* 12. against any *churchwarden* or *overseer of the poor*, or other person who in their aid or by their commandment should do any thing concerning their offices), he may plead the general issue, and give the special matter in evidence; and if a verdict shall pass for him, or the

7 J. 1. c. 5. May plead the general issue.

7 J. 1. c. 5. plaintiff shall be nonsuit or suffer discontinuance, he shall have double costs. And such action shall be laid in the county where the fact was committed, and not elsewhere.

Double costs.

43 El. c. 2. By stat. 43 *Eliz. c.* 2. § 19. Persons sued for any thing done on that act, may plead the general issue, and give the special matter in evidence; and if a verdict be found for the defendant, or the plaintiff be nonsuit, the defendant shall have treble damages with costs, to be assessed by the jury in case of the issue tried, or by a writ to enquire of the damages in case the plaintiff is nonsuit.

Treble damages and costs.

24 G. 2. c. 44. And by stat. 24 *Geo.* 2. *c.* 44. No action shall be brought against any *constable, headborough*, or *other officer*, or any person acting by his order, and in his aid, for any thing done in obedience to the warrant of a justice of the peace, until demand hath been made, or left at the usual place of his abode, by the party, or by his attorney, in writing, signed by the party demanding the same, of the perusal and copy of such warrant, and the same hath been refused or neglected for six days after such demand; and if after compliance therewith, any such action shall be brought, without making the justice who signed such warrant defendant, on producing and proving such warrant at the trial, the jury shall give their verdict for the defendant, notwithstanding any defect of jurisdiction in the justice. And if such action be brought jointly against the justice and such constable, headborough, or other officer, or person acting in his aid as aforesaid; then on proof of such warrant, the jury shall find for the defendant. And if the verdict shall be given against the justice, the plaintiff shall recover his costs against him, to be taxed in such manner by the proper officer, as to include such costs as the plaintiff is liable to pay to such defendant for whom such verdict shall be found as aforesaid.

No action to be brought until a copy of the warrant hath been demanded and refused.

Jackson's case, Lofft. 249. *Bull. N. P.* 24. 1 *Bott*, 325. An action of trespass was brought by the plaintiff against the overseers of the poor for taking his gelding. They alleged, that by virtue of their office, and in pursuance of a justice's order, they levied satisfaction for a poor rate, which was the trespass complained of. It was objected on the trial, that by stat. 24 *Geo.* 2. *c.* 44. demand should have been made of the perusal and copy of the justice's warrant, and six days neglect or refusal. And the judge who tried the cause being of the same opinion, the plaintiff was nonsuited. It was moved for a rule to shew cause why the nonsuit should not be set aside. Against the rule it was argued, that stat. 24 *Geo.* 2. was a remedial act, and to be construed so as to suppress the mischief, and advance the remedy. That the mischief was, that justices of the peace were often ensnared by surprise on some little inadvertency into which they had fallen; that the remedy was giving them a power to rectify that inaccuracy or mistake; so as neither the person affected by it might suffer, nor the justice be vexatiously harassed. That in order to this, notice is required by the statute, to give the party a power of tendering amends, bringing money into court, or pleading as he shall be advised. That *constables* and *headboroughs* are likewise by the said act of 24 *Geo.* 2. not to be proceeded against, without demand and perusal of the warrant. That *churchwardens* and *overseers of the poor* are within the same reason, and therefore within the remedy. That after constables and headboroughs, are added *other officers*.—By Ld. *Mansfield* and the Court: They are clearly within the act of 24 *Geo.* 2. The justice's warrant is the

Overseers of the poor, and all officers acting under a justice's warrant, are within the protection of the 24 G. 2. c. 44.

authority under which they act. To extend the benefit of the statute of 21 *J.* was the intent of the statute of 24 *Geo.* 2. and all officers acting under a justice's warrant are included in it.

Also in the case of *Harper* v. *Carr*, *E.* 37 *Geo.* 3. 7 *T. R.* 270. 1 *Bott*, 326. it was determined, that a churchwarden making distress for a poor rate under a warrant of two justices, is entitled to the protection of 24 *Geo.* 2. *c.* 44. (*ante*, p. 30.); and that granting such warrant is a judicial and not a ministerial act; and that the party ought first to be summoned to hear what he hath to say in his defence, before a warrant of distress be issued.

(*d*) *Of the Remedies against its abuse.*

Remedies against overseers.

On the other hand the legislature has not left the public without convenient remedies against these officers, when they neglect their functions, abuse their powers, or refuse to fulfil their contracts.

For all neglects of duty, and abuses in office, as well as for non-acceptance of the office itself, they are punishable by indictment; and where the abuse has been very flagrant the court of K. B. has sometimes granted an information. *Rex* v. *Slaughter*, *Cald.* 247. *n.* (*a*) 2 *Nol. P. L. c.* 36. § 1. Stat. 13 & 14 *C.* 2. *c.* 12.

In many instances penalties are inflicted, to be recovered by action, or levied on conviction by magistrates. See the enactments of stats. 43 *Eliz. c.* 2. § 2. 3 & 4 *W.* & *M. c.* 11. § 10. 17 *G.* 2. *c.* 5. § 1. 9 *Geo.* 3. *c.* 37. 56 *Geo.* 3. *c.* 139. § 6. and more particularly 33 *Geo.* 3. *c.* 55. § 1. *post.*

43 El. c. 2. Penalty of 20s.

In general, overseers absenting themselves without lawful cause from the monthly meeting enjoined by stat. 43 *Eliz. c.* 2. § 2. p. 29. or being negligent in their office, shall (by same §) forfeit for every default 20*s.* to the poor, to be levied by one of the churchwardens or overseers by warrant of two justices (1 *Q.*) by distress; or in default thereof, any two such justices may commit the offender to the common gaol, there to remain, without bail or mainprize, till the said forfeiture shall be paid.

But this penalty for not meeting in the church shall not be inflicted on overseers of extra-parochial places, because they have no church to meet in. 8 *Mod.* 40. And no overseer can be adjudged guilty of absenting himself from the meeting until he have had personal notice of his appointment. *Rex* v. *Harman*, 1 *Bott*, 335. *ante*, p. 26. note (*a*).

Overseers are indictable for not relieving the poor, &c.

If an overseer do not provide for the poor, he is indictable; and if he relieve the poor when there is no necessity for it, it is a misdemeanor. *Tawney's case*, *E.* 3 *Ann.* 16 *Vin. Abr. title* Poor, 415. 1 *Bott*, 333. 2 *Nol. P. L.* 3d *Edit.* 372.

17 G. 2. c. 38. Penalty of 20s. and not exceeding 5l.

By stat. 17 *Geo.* 2. *c.* 38. § 14. Any churchwarden, overseer, or other parish officer neglecting to obey any directions of that act where no penalty is before provided by that act, being convicted thereof on oath before two justices, in two calendar months after the offence committed, shall forfeit not exceeding 5*l.* nor less than 20*s.* to the use of the poor, to be levied by distress and sale of offender's goods by warrant of such justices, and to be paid to some churchwarden or overseer of the poor of such parish, township, or place, for the purpose aforesaid.

33 G. 3. c. 55. Punishment for neglect of duty.

By stat. 33 *Geo.* 3. *c.* 55. § 1. it is provided, that two justices at any special or petty sessions, upon complaint upon oath of any neglect of duty, or disobedience of any lawful warrant or order of

33 G. 3. c. 55. any justice, by any overseer of the poor or other parish officer, (such person having been duly summoned to appear and answer such charge,) may impose, upon conviction, any reasonable fine not exceeding 40*s.* upon such overseer or other parish officer, as a punishment for such disobedience or neglect of duty; and if not paid, may by their warrant levy the same by distress and sale of the goods and chattels of such offender, rendering to him the overplus (if any) after deducting such fine and the charges of such distress and sale; to be applied to the poor of the parish or place where such offender shall reside, at the discretion of such justices: and for want of such distress, such offender shall be committed to the house of correction for any time not exceeding ten days.

Appeal. If any person shall think himself aggrieved, he may appeal to the next sessions, upon giving ten days' notice thereof.

§ 2. And no person acting under any such warrant of distress, shall be deemed a trespasser *ab initio*, by reason of any irregularity in such warrant or proceedings thereupon.

3 W. c. 11. Witnesses. And by stat. 3 *W.* *c.* 11. § 12. In all actions to be brought in the courts at *Westminster*, or at the assizes, for the recovery of any sum mis-spent or taken to their own use by the churchwardens or overseers, the evidence of the parishioners, other than such as receive alms, shall be admitted.

48 G. 3. c. 96. Lunatic paupers. Stat. 48 *Geo.* 3. *c.* 96. § 18. Inflicts a penalty not exceeding 10*l.* nor less than 40*s.* upon any overseer neglecting to give information to a justice of the peace of any lunatic pauper. See Vol. III. title Lunatics.

59 G. 3. c. 127. And stat. 59 *Geo.* 3. *c.* 127. § 3. Imposes a like penalty upon overseers of the poor neglecting to give information to a justice of the peace as to the state of the lunatic. See Vol. III. title Lunatics.

Contracts of overseers. Upon the contracts of overseers, express or implied, for necessaries furnished to the use of the poor or otherwise, the common action of *assumpsit* lies against them as against all other persons; and they are liable in damages for acts done by them, without authority, or in abuse of their office. See *Simmons* v. *Wilmot*, 3 *Esp.* 92. *Lamb* v. *Bunce*, 4 *M.* & *S.* 275. 2 *Nol. P. L.* 376. 3*d Ed.*

55 G. 3. c. 137. Persons having the management of the poor, not to be concerned in contracts, &c. whilst in office. Stat. 55 *Geo.* 3. *c.* 137. § 6. Enacts, that no churchwarden or overseer of the poor, or other person or persons in whose hands the collection of the rates for the relief of the poor, or the providing for, ordering, management, controul, or direction of the poor of any parish or parishes, township or townships, hamlet or hamlets, place or places, shall or may be placed jointly with or independent of such churchwardens and overseers, or any of them, under or by virtue of any act or acts of parliament, shall, either in his own name, or in the name of any other person or persons, provide, furnish, or supply for his or their own profit, any goods, materials, or provisions, for the use of any workhouse or workhouses, or otherwise, for the support and maintenance of the poor, in any parish or parishes, township or townships, hamlet or hamlets, place or places, for which he or they shall be appointed as such, during the time which he or they shall retain such appointment, nor shall be concerned, directly or indirectly, in

Penalty. furnishing or supplying the same, or in any contract or contracts relating thereto, under pain of forfeiting the sum of 100*l.*, with full costs of suit, to any person or persons who shall sue for the

same by action of debt, or on the case, in any of H. M.'s courts of record at *Westminster;* in which action or actions no essoign, protection, wager of law, or more than one imparlance shall be allowed: Provided nevertheless, that if it shall happen in any parish or parishes, township or townships, hamlet or hamlets, place or places, that a person or persons competent and willing to undertake the supply of any of the articles or things required for such workhouse or workhouses, or for the use of the poor there, cannot be found within a convenient distance therefrom, other than and except some or one of the churchwardens and overseers of the poor, or other person or persons having the ordering, managing, controul or direction of the poor, in such parish or parishes, township or townships, hamlet or hamlets, place or places, then and in every such case it shall and may be lawful to and for any two or more neighbouring justices of the peace (proof thereof having been first duly made before them upon oath, and which oath such justices or any one of them are and is hereby authorized and empowered to administer) by certificate under their hands and seals, to permit and suffer any one or more of such churchwardens and overseers or other such person or persons as aforesaid, to contract and agree for the furnishing and supplying of any articles or things which may be required for such workhouse or workhouses, or otherwise, for the use of the poor of such parish or parishes, township or townships, hamlet or hamlets, place or places, during the time which he or they may retain such appointment, any thing herein contained to the contrary notwithstanding; and such certificate shall be entered with the clerk of the peace or town clerk of the county, city, town, or district, in which such person or persons shall reside, and a copy thereof left with him, for which entry every such clerk shall receive 1*s.* and no more; and from that time, every person and persons named in any such certificate shall be discharged from any penalty to which he or they would otherwise be liable under this act, for furnishing or supplying any such articles or things as aforesaid; and in case any action or suit for the recovery of any such penalty as aforesaid shall be commenced against any person or persons to whom such certificate shall have been granted as aforesaid, it shall and may be lawful to and for such person or persons to plead generally, that he or they was or were duly discharged from any liability to such forfeiture, by a certificate granted according to the provisions of this act; and upon due proof being given of such certificate, and of such entry thereof as aforesaid, the jury shall find a verdict for the defendant in such action or suit; and if the plaintiff or plaintiffs shall become nonsuited, or discontinue his, her, or their action; or if verdict shall pass against him, her, or them: or if judgment shall be had against him, her, or them, on demurrer; then the defendant or defendants in such action shall have double costs, and have such and the like remedy for the recovery of the same as any defendant or defendants have or hath for recovering costs of suit in any other cases by law.

55 G. 3. c. 137.

Exceptions in certain cases.

In a recent case, *Proctor* v. *Mainwaring, M.* 60 *G.* 3. 3 *B.* & *A.* 145., it was decided by the court of K. B. that this statute of 55 *Geo.* 3. *c.* 137. § 6., only prohibits churchwardens or overseers from supplying the workhouse or the poor of the parish generally;

Proctor v. Mainwaring.

and therefore, where an overseer, receiving an order for the relief of *A. W.*, an individual pauper, paid her part in money, and by her consent, gave her the remainder in goods from his shop; such overseer was not liable to the penalty of 100*l.* imposed by the act. — *Bayley* J. said, The object of the act was, to prevent imposition upon the parish by the overseers. If, therefore, goods are required for the parish workhouse, or if any other general supply for the poor is wanted, the overseer is not to furnish that supply; but it seems to me, these are the only cases contemplated by the act. Where a pauper carries an order for relief to the overseer, he has a right to demand it in money; and, in case of refusal, has a speedy remedy, by complaint to the justice who made the order. If the conduct of the overseer in selling the articles be oppressive, the justice may punish him for it; but if the overseer be absolutely prohibited from selling, it might be an hardship upon the pauper. For there being no words distinguishing the case of money laid out by the pauper, after full payment by the overseer, from that of a payment partly in goods and partly in money, a pauper might be compelled, in case the overseer kept the only shop in the village where the articles were supplied, to go to a very inconvenient distance, for the purpose of purchasing them from some one else. — *Holroyd* J. However desirable it may perhaps be to prevent the mischief attending such cases as the present, yet we cannot extend a penal statute so as to bring this case within it. The words of the statute appear to me applicable only to a general supply of the poor by the parish officers. This case, therefore, does not fall within the act.

If a churchwarden supply wheat and flour to the poor of the parish for which he is appointed, he is liable to the penalty inflicted by 55 G.3. c. 137. § 6. although he furnish such articles at a fair market price.

Pope v. *Backhouse*, *E.* 58 *G.* 3. 2 *Moore's C.P.* 186. 8 *Taunt.* 239. S.C. This was an action of debt founded on stat. 55 *G.* 3. *c.* 137. § 6. and brought to recover certain penalties from the defendant, as one of the churchwardens of the parish of *Cleobury-Mortimer*, in the county of *Salop*. The first count of the declaration stated that the defendant was a churchwarden of that parish, duly appointed in that behalf, and that during the time in which he retained such appointment, he did in his own name, provide, furnish, and supply, for his own profit, certain bread, flour, wheat, and meal for the support and maintenance of the poor of the parish for which he was appointed such churchwarden, against the form of the statute, &c. whereby he forfeited the sum of 100*l.* There were several other counts, charging the defendant as collector of the rates for the relief of the poor of the said parish, and as a person duly appointed to order the management, control, and direction of such poor, and charging him with different offences on different days. The defendant pleaded *nil debet*, on which issue was joined. At the trial of the cause before *Burrough* J. at the *Shrewsbury* Lent assizes, 1818, it was proved that the defendant was a farmer, and had supplied corn and flour to some of the poor of the parish in which he resided, and for which he was churchwarden; but from the whole of the evidence, the jury found that the defendant sold it only at a fair market price, upon which the learned judge, having, in the course of the trial, intimated an opinion to the contrary, directed a verdict to be entered for the plaintiff for one penalty, on the first count of the declaration, with liberty for the defendant to move to set it aside, and to enter a verdict for him-

self, if such sale did not come within the construction of the statute. *Copley* Serj. now moved accordingly, and observed, that there was no preamble to the clause in question, nor did the general preamble to the act refer to it; and contended, that the defendant did not fall within the terms of the statute, as it was proved that he sold at a fair market price, and therefore did not sell exclusively for profit.—*Gibbs* C. J. A farmer must have a profit by selling the produce of his farm at a market. If a churchwarden or overseer purchase corn or flour, and supply a workhouse therewith, on account of the want of provisions by the paupers inhabiting it, I think he would come within the provision of the statute; but if he supply the poor as he would other individuals, and charge them the market price for the articles furnished, it is difficult to say that such person is not liable to the penalty inflicted by it; indeed the words of the act are so strong, that I have no doubt in saying that I think the defendant liable, and therefore that the verdict entered for the plaintiff was perfectly right. The rest of the Court concurring, R. R.

Pope v. Backhouse.

West v. *Andrews, H.* 2 *G.* 4. 5 *B.* & *A.* 328. Debt on stat. 55 *G.* 3. *c.* 137. § 6. for a penalty of 100*l.* Declaration stated, that defendant, on the 1st of *June*, 1820, was overseer of the poor of *Westhampnett*, in *Sussex*, and during the time he was overseer, furnished and supplied in his own name, goods and provisions for the support of the poor. The second count described him as a person in whose hands the collection of the rates was. Plea, general issue.—At the trial before *Burrough* J., at the last assizes for the county of *Sussex*, it appeared that defendant was one of the guardians of the poor for the parish, and that the poor-house there was under their control, being managed by one *Griffiths*, who was the master of the poor-house appointed by the guardians, and receiving his orders from them. *Griffiths* provided for the poor, having a contract at so much per head, and found all the meat, &c. In the year 1820, he bought of the defendant, then being such guardian of the poor, four live sheep for the use of the poor, and paid him for them. The learned judge thought this not a case within the act, and directed a non-suit. *Gurney* having in last *Mich.* term obtained a rule *nisi* for a new trial, *Marryat* shewed cause. In *Proctor* v. *Mainwaring*, and *Pope* v. *Backhouse*, *ante* p. 34. the articles were supplied to the individuals receiving relief;—here that was not the case.—*Abbott* C. J. I am of opinion, that this is a case within the act of parliament. Here the defendant has made a bargain for the supply of provisions with a third person, who has the contract for providing for the poor, and whom the defendant, in conjunction with others, appoints to his situation, and whose conduct it is his duty to superintend. Under these circumstances, it seems to me, that all the mischief which was contemplated by the legislature would arise, if we were to hold that it was lawful. I am therefore clearly of opinion, that the defendant's case falls both within the words and spirit of the act of parliament, and that the rule for a new trial must therefore be made absolute. R.A.

J. S. being the master of the workhouse, appointed by and receiving orders from the guardians of the poor of the parish of *W.*, bought provisions from *A. B.* one of such guardians: Held, that *A. B.* was liable to the penalty of 100*l.*, imposed by stat. 55 G. 3. c. 137. § 6.

West v. *Andrews, M.* 3 *G.* 4. 1 *B.* & *C.* 77. Debt on statute 55 *G.* 3. *c.* 137. § 6. for a penalty of 100*l.* The first count stated, that the defendant was overseer of the poor of the parish of *Westhampnett*, in *Sussex*, duly appointed in that behalf; and that

A guardian of the poor, appointed under 22 G. 3. c. 83. is within

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the 55 G. 3. c. 137. § 6., notwithstanding the former act, § 42., imposes a penalty for the supply of the provisions for the poor by such guardians.

Where a count stated that *A. B.* supplied the poor of the parish of *W.* with provisions, and the evidence was, that he supplied the poor of the parish of *W.* and other parishes in a workhouse: Held, first, that it was no variance, the proof being larger than the allegation. Secondly, that the objection as to a variance between the allegation of a supply of the poor and the proof of a supply of the poor in the workhouse, not being taken at *nisi prius*, could not be afterwards available.

during the time he retained such appointment, he did, in his own name, provide, furnish, and supply for his own profit, certain goods and provisions for the support and maintenance of the poor of the said parish, for which he was so appointed overseer as aforesaid. The second count stated, that the defendant was a person in whose hands the collection of the rates for the relief of the poor of the said parish was placed, under and by virtue of certain acts of parliament. The third count stated, that he was a person in whose hands the providing for, ordering, management, control, and direction of the poor of the said parish was placed, by virtue of certain acts of parliament. The 4th, 5th, and 6th counts were similar to the 1st, 2d, and 3d, varying only in stating, that the defendant was directly concerned in furnishing and supplying for his own profit, certain other goods, &c. The 7th, 8th, 9th, 10th, 11th, and 12th counts varied in stating, that the supply was for the use of a certain workhouse, of and belonging to the said parish of *Westhampnett*, for the support, amongst other poor in the said work-house, of the poor of the said parish of *Westhampnett*. The 13th count stated, that the defendant was a person amongst others in whose hands the providing for, ordering, control, and direction of the poor of the united parishes of *Westhampnett*, *Boxgrove*, *Midlavant*, and *West Stoke*, was placed by virtue of certain acts of parliament; and that the defendant in his own name, provided, &c. certain goods for the support and maintenance of the said united parishes. The 14th count stated, that he was directly concerned in providing, &c. goods for the support and maintenance of the said poor of the said united parishes, &c. The 15th and 16th counts stated the supply to be for the use of a certain workhouse, of and belonging to the said united parishes, &c. for the support and maintenance of the poor of the said united parishes, &c. The defendant pleaded the general issue. — At the trial at the last *Lent* assizes for the county of *Sussex*, before *Wood* B., it appeared that the defendant was guardian of the poor of the parish of *Westhampnett*, and that the poor of that parish, together with the poor of four parishes, including those mentioned in the declaration, were jointly maintained in a workhouse, but the parish of *Westhampnett* was regularly united according to the provisions of stat. 22 *G.* 3. *c.* 83. § 43. with only one of those parishes. The supply of the provisions in question was to the master of the workhouse, who, in 1820, bought of the defendant four sheep for the use of the poor, and paid him for them. The master of the workhouse had a contract for providing for the poor at so much a head, and found all the meat, &c. The learned judge was of opinion, that this was a case within the statute, pursuant to the decision of this court in *West* v. *Andrews*; and the plaintiff obtained a verdict for one penalty which was entered on the third count. *Marryat*, in *Easter* term last, obtained a rule *nisi* for entering a nonsuit, on the ground that the evidence was not applicable to that count, or to any other count in the declaration, the supply being in fact for the poor of the united parishes in the workhouse, and only four parishes being stated as united in the declaration, whereas the proof was either of a legal union of two, or an union *de facto* of five parishes. — After argument, *Abbott* C. J. In this case it is clear, that if the evidence given at the trial be sufficient to sustain any one of the counts of the declaration,

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there ought not to be a nonsuit entered. The first objection is, that this was provided for, and must fall under stat. 22 *G.* 3. *c.* 83. § 42. But if stat. 53 *G.* 3. *c.* 137. § 6. does not extend to a case like the present, a great many words in it would be altogether insensible. For that clause speaks of persons having the providing for, ordering, management, controul, or direction of the poor of any parish or parishes, township or townships, hamlet or hamlets, place or places. It therefore clearly extends to persons having the control of the poor in more parishes than one, and applies, as it seems to me, to the present case. The next objection is, that the character of the defendant is not properly described. He is described in the third count as a person in whose hands the providing for, ordering, management, controul, and direction of the poor of the parish of *Westhampnett* was placed; How is that allegation sustained? It appears, that under *Gilbert*'s act, (22 *G.* 3. *c.* 83.) where more parishes than one are united, every guardian of the poor appointed under that act, has and is invested with all the powers and authorities given to overseers of the poor by any act or acts of parliament, and is to all intents and purposes, except with regard to the making and collecting rates, an overseer of the poor for the parish for which he is appointed guardian. If then this defendant was lawfully appointed guardian of the poor of the parish of *Westhampnett*, he is a person in whose hands was placed the control of the poor of that parish for which he was so appointed guardian. The objection, therefore, that his character is improperly described, cannot prevail. The last objection is, that in the third count the supply is stated to have been for the support and maintenance of the poor of the said parish; whereas by the proof it appears to have been for their support and maintenance in the workhouse, and it is urged that as the 55 *G.* 3. *c.* 137. § 6. describes these as two distinct classes, the allegation should have strictly conformed to the proof. I am by no means satisfied that this objection, even if taken at *nisi prius*, could have prevailed. But I am clearly of opinion, that a mere formal objection of this sort, if not so taken, cannot be available afterwards. I think, therefore, that all the objections are insufficient, and that this rule must be discharged.—*Bayley* J. The 55 *G.* 3. *c.* 137. § 6. seems to have been intended as a general provision, and the legislature could not have meant that there should be one rule for parishes united under 22 *G.* 3. *c.* 83., and another in cases of parishes not so united. It may be true, that this case would have fallen under *Gilbert*'s act, previously to 55 *G.* 3., but the latter statute, when passed, contained a general provision, within which, this case, if not excepted, would fall. I can see no reason for any such exception being made, and in the absence of any express exception, it seems to me that no exception can be implied from *Gilbert*'s act. I am also of opinion, that a guardian appointed under 22 *G.* 3. is clearly a person having the ordering, management, control, and direction of the poor of the parish for which he is appointed, and that he falls under the provisions of the 55 *G.* 3. The guardians have the power of recommending the master of the workhouse, and may make agreements with respect of the diet of the poor over which they are to exercise a strict control. It is the duty, therefore, of

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each of them to take care that wholesome food is supplied. Now all these objects will be defeated, if the guardian, who is to inspect the conduct of the governor, supplies the workhouse with provisions. The case, therefore, is clearly within the mischief to be remedied. As to the objection that the declaration does not sufficiently describe the persons for whose care and support the goods were supplied, it seems to me that the allegation is substantially proved, for if a person supplies the poor of any parish, it is immaterial whether he supplies them in or out of a workhouse; and if he supplies a workhouse which contains the poor of the parishes *A.*, *B.*, *C.*, and *D.*, he does in fact supply the poor of each of these parishes. This rule must therefore be discharged. —*Holroyd* J. I am of the same opinion. The *55 G.* 3. *c.* 137. is not confined to cases not falling under *Gilbert's* act. The words seem intended to include cases like the present, and we ought to give them a liberal construction, so as to remedy the mischief contemplated. It is contended that inasmuch as this defendant was only guardian of the poor, he was not charged with the maintenance of the poor of this particular parish, and that the allegation to that effect in the declaration is not proved. It appears, in fact, that he had a control over the maintenance of the poor of the parish. And as to the description of his character in the declaration, it is sufficiently proved by the evidence; for in pleading it is not necessary that the allegation should be as extensive as the proof. Where a prescription is pleaded for a right of common for sheep, and the proof is of a right for all commonable cattle, it is sufficient (*a*); and so here the allegation is, that he had the ordering and direction of the poor of one parish; and the proof is, that he had the ordering and direction of the poor of that parish and others. As to the third objection, I agree with my Lord Chief Justice, that it not being taken at the trial it cannot prevail now. *Best* J. concurred. R. D.

Vestries.

For the regulation of parish vestries, see stats. 58 *G.* 3. *c.* 69. and 59 *G.* 3. *c.* 85. *post.* § III. 5.; and for the establishment of select vestries, see 59 *Geo.* 3. *c.* 12. *post.* § III. 6.

§ I. (9.) Of recovering Possession of Parish Houses or Lands.

59 G. 3. c. 12. Justices empowered, in certain cases, to deliver the possession of parish houses to overseers. Recovering possession of parish houses, &c.

By stat. 59 *G.* 3. *c.* 12. § 24. After reciting, that whereas difficulties have frequently arisen, and considerable expences have sometimes been incurred, by reason of the refusal of persons who have been permitted to occupy, or who have intruded themselves into parish or town houses, or other tenements or dwellings built or provided for the habitation of the poor, or otherwise belonging to such parishes, to deliver up the possession of such houses, tenements, or dwellings, when thereto required; and it is expedient to provide a remedy for the same; it is enacted, that if any person who shall have been permitted to occupy any parish or

(*a*) See *Bushwood* v. *Pond*, *Cro. Eliz.* 722. *Bruges* v. *Searl*, *Carth.* 219 *Bailiffs*, &c. *of Tewksbury* v. *Bricknell*, 1 *Taunt.* 142.

town house, or any other tenement or dwelling belonging to or provided by or at the charge of any parish, for the habitation of the poor thereof, or who shall have unlawfully intruded himself or herself into any such house, tenement, or dwelling, or into any house, tenement, or hereditament belonging to such parish, shall refuse or neglect to quit the same, and deliver up the possession thereof to the churchwardens and overseers of the poor of any such parish, within one month after notice and demand in writing, for that purpose, signed by such churchwardens and overseers, or the major part of them, shall have been delivered to the person in possession, or in his or her absence affixed on some notorious part of the premises, it shall be lawful for any two of H. M.'s justices of the peace, upon complaint to them made by one or more of the churchwardens and overseers of the poor of the parish in which any such house, tenement, or dwelling shall be situated, to issue their summons to the person against whom such complaint shall be made, to appear before such justices at a time and place to be appointed by them, and to cause such summons to be delivered to the party against whom the complaint shall be made, or in his or her absence to be affixed on the premises, seven days at the least before the time appointed for hearing such complaint; and such justices are hereby empowered and required, upon the appearance of the defendant, or upon proof on oath that such summons hath been delivered or affixed as is hereby directed, to proceed to hear and determine the matter of such complaint; and if they shall find and adjudge the same to be true, then by warrant under their hands and seals to cause possession of the premises in question to be delivered to the churchwardens and overseers of the poor of the parish, or to some of them.

59 G. 3. c. 12. § 24.

Mode of proceeding.

Summons.

§ 25. If any person to whom any land appropriated, purchased, or taken under the authority of this act, for the employment of the poor of any parish, or to whom any other lands belonging to such parish, or to the churchwardens and overseers thereof, or to either of them, shall have been let for his or her own occupation, shall refuse to quit and to deliver up the possession thereof to the churchwardens and overseers of the poor of such parish, at the expiration of the term for which the same shall have been demised or let to him or her; or if any person or persons shall unlawfully enter upon, or take or hold possession of any such land, or any other land or hereditaments belonging to such parish, or to the churchwardens or overseers, or to either of them, it shall be lawful for such churchwardens and overseers of the poor, or any of them, after such notice and demand of possession as is by this act directed in the case of parish houses, to exhibit a complaint against the person or persons in possession of such land, before two of his majesty's justices of the peace, who are hereby authorized and required to proceed thereon, and to hear and determine the matter thereof; and if they shall find and adjudge the same to be true, to cause possession of such land to be delivered to the churchwardens and overseers of the poor, or some of them, in such and the like course and manner as are by this act directed with regard to parish houses.

Justices empowered to deliver possession of land appropriated for th poor.

Forms of Proceedings to recover possession of Parish Houses or Lands, on stat. 59 *G. 3. c.* 12. § 24, 25, from *Y. C. P.* 100. *et seq.*

A. (A.) Notice to quit, to be given by Overseers of the Poor, in order to recover Possession of Parish Houses or Lands; to be delivered to the person in possession, or in his absence, affixed on some notorious part of the Premises.

To A. O. of the parish of ———, in the county of ———.

UNDER and by virtue of the provisions of an act passed in the 59th year of king George *the third, intituled* An act to amend the laws for the relief of the poor, *we hereby give you notice to quit the parish* [or *town*] *house* [or *other tenement* or *dwelling,*] *belonging to* [or *provided by* or *at the charge of*] *the parish of* ——— *in the county of* ———, *for the habitation of the poor thereof, which you have been permitted to occupy in the said parish,* [or as the case may be, as, *into which you have unlawfully intruded yourself,*] *situated at* ——— *in the said parish,* [or *parish of* ———, *in the county of* ———, as the case may be,] *and deliver up the possession thereof to us, the churchwardens and overseers of the poor of the said parish of* ———, *within one month after this notice and demand in writing for that purpose.*

Dated on —— *day, the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ——.	A. B. C. D.	*Churchwardens.*
	E. F. G. H.	*Overseers of the Poor.*

[A duplicate or copy of this notice should be made and kept by the person who is to prove the service of it.]

B. (B.) Information of an Overseer of the Poor against a person for refusing to quit Possession within one month after the foregoing Notice and demand.

County of ——— } *THE information and complaint of* O. P., *one of the overseers of the poor of the parish of* ——— *in the said county, made on oath before me,* J. P. *esquire, one** [or J. P. *and* K. P. *esquires, two*] *of his majesty's justices of the peace in and for the said county, the* ——— *day of* ——— *in the year of our Lord one thousand eight hundred and* ———, *who says that* A. O. *a poor person residing in the parish of* ——— *in the said county, having been permitted to occupy* [or, *having unlawfully intruded himself into*] *a parish* [or *town*] *house* [or *tenement,* or *dwelling*] *belonging to* [or *provided by,* or *at the charge of*] *the said parish of* ——— *situated at* ——— *in the said parish,* [or *in the parish of* ——— *in the county of* ———, as the case may be] *has refused* [or *neglected*] *to quit the same and deliver up the possession thereof to the churchwardens and overseers of the poor of the said parish of* ——— *within one month after notice and demand in writing for that purpose signed by the said* [or *major part of the*] *churchwardens*

* By stat. 3 *Geo.* 4. *c.* 23. § 2. One justice is competent to receive the information, and issue the summons. *Vide* title "Conviction," Vol. I.

and overseers of the poor, and delivered to him personally: [or, *in his absence affixed on the door,* or some other notorious part *of the said premises:*] *The said complainant therefore prays such redress in the premises as to law does appertain.*

O. P. *Overseer of the Poor.*

Before me, [or *us.*]

(C.) Summons thereupon. C.

[To be delivered to the party, or in his absence to be affixed on the premises, seven days at the least before the time appointed for hearing of the complaint.]

County of ——— } To A. O., of the parish of ——— in the said county of ——— [*or,* as the case may be.]

WHEREAS O. P., *one of the overseers of the poor of the parish of ——— in the said county, has this day preferred an information and complaint upon oath against you before me,* J. P. *esquire, one* [or *us,* J. P. *and* K. P. *esquires, two*] *of his majesty's justices of the peace in and for the said county, for that you the said* A. O., *being a poor person residing in the aforesaid parish of* ———, *and having been permitted to occupy,* [or, *having unlawfully intruded yourself into*] *a parish* [or *town*] *house* [or *tenement,* or *dwelling,*] *belonging to* [or *provided by,* or *at the charge of,*] *the said parish of* ———, *situated at* ——— *in the said parish,* [or *in the parish of* ——— *in the county of* ——— as the case may be] *have refused* [or *neglected*] *to quit the same and deliver up the possession thereof to the churchwardens and overseers of the poor of the said parish of* ———, *within one month after notice and demand in writing for that purpose, signed by the said* [or, *major part of the*] *churchwardens and overseers of the poor, and delivered to you personally:* [or, *in your absence affixed on the door, or* some other notorious part *of the said premises:*]

These are therefore to require you personally to appear before me [or *us*] *and such others of his majesty's justices of the peace for the said county as shall be present at the* ——— *in* ——— *in the said county of* ———, *on* ——— *the* ——— *day of* ——— *next, at* ——— *o'clock in the forenoon, then and there to answer the premises. Herein fail not. Given under my hand and seal* [or *our hands and seals*] *the* ——— *day of* ——— *in the year of our Lord one thousand eight hundred and* ———.

N. B. A copy should be taken of the summons, or what is better, a duplicate granted, so that a proper return of service may be made and regularly proved on oath.

(D.) Warrant thereon, to cause Possession to be given. D.

County of } To the Chief Constable of the Hundred of ———; to the Petty Constables of the parish of ———, in the said hundred and county, and to each and every of them.

WHEREAS O. P. *one of the overseers of the poor of the parish of* ——— *in the said county, did, on the* ——— *day of* ——— *last, prefer an information and complaint upon oath before*

us, J. P. *and* K. P. *esquires, two* [or *me,* J. P. *esquire, one,* according to *stat.* 3 G. 4. c. 23. § 2.] *of his majesty's justices of the peace in and for the said county, against* A. O., *a poor person residing in the said parish of* ———, *for that he the said* A. O. *having been permitted to occupy* [or, *having unlawfully intruded himself into*] a *parish* [or *town*] *house* [or *tenement,* or *dwelling*] *belonging to* [or *provided by,* or *at the charge of,*] *the said parish of* ———, *situated at* ———, *in the said parish of* ———, [or, *in the parish of* ——— *in the county of* ——— as the case may be,] *had refused* [or *neglected*] *to quit the same and deliver up the possession thereof to the churchwardens and overseers of the poor of the said parish of* ———, *within one month after notice and demand in writing for that purpose, signed by the said* [or, *major part of the*] *churchwardens and overseers of the poor, and delivered to him the said* A. O., *personally:* [or, *in the absence of the said* A. O., *affixed on the door,* or some other notorious part *of the said premises:*] *And whereas, upon the appearance of the said* A. O. *this day before us, in pursuance of a summons for that purpose,* [or, *And whereas on the* ——— *day of* ——— *last, a summons was duly issued to require the said* A. O. *to appear before us this day at* ——— *in the said county, to answer unto the said complaint, and it appears to us,* J. P. *and* K. P. *esquires, two of his majesty's justices of the peace for the said county, upon the oath of* A. C., *constable of the parish of* ——— *aforesaid, that he the said* A. C. *did duly deliver the said summons to the said* A. O., *on the* ——— *day of* ——— *instant:* [or, *that he the said* A. C. *did use his best endeavours to deliver the said summons to the said* A. O., *and that in the absence of the said* A. O. *he the said* A. C. *did affix, or cause to be affixed the said summons on the door of the said house,* or *premises,* (as the case may be,) *seven days at the least before the time appointed for hearing the said complaint, but that he the said* A. O. *has neglected to appear according to the said summons:*] *we the said justices have proceeded to hear and determine the matter of the said complaint, and do find and adjudge the same to be true: we do therefore charge and command you that you without delay go to and cause possession of the premises in question to be delivered to the churchwardens and overseers of the poor of the said parish of* ———, *or some or one of them, pursuant to and in compliance with the directions of an act passed in the fifty-ninth year of the reign of king* George *the third, intituled,* An act to amend the laws for the relief of the poor. *Herein fail not. Given under our hands and seals at* ——— *in the said county of* ———, *the* ——— *day of* ——— *in the year of our Lord one thousand eight hundred and* ———.

J. P.
K. P.

§ II. Of the Poor Rate; and herein,

(1.) *Who are to make the rate.*

(2.) *What are the purposes, and what the time for which it may be made; and also of the reimbursement of overseers.*

(3.) *Upon whom the rate may be made; and herein as to who shall be said to be a beneficial occupier.*

(4.) *What property is rateable: (and for the several species of property see (post,) the title to* Division (4.) page 62.

(5.) *Property where to be rated.*
(6.) *Of the proportion in which the rate shall be made, and paid.*
(7.) *Of allowance and publication.*
(8.) *Remedy by application to two justices out of sessions, with consent of overseers, in cases of inability through poverty to pay the rate.*
(9.) *Appeal, and the power of the sessions thereupon.*
(10.) *Of distraining for the poor rate.*
(11.) *Rating in aid.*

It is curious to a contemplative person to investigate by what
steps and degrees the compulsory maintenance became established
in this kingdom. By a stat. made in the 12 *R.* 2. viz. *c.* 7. the poor 12 R. 2. c. 7.
were restrained from wandering abroad, and were required to
abide in the towns where they were born, or in other places within
the *hundred:* within which districts they were allowed to beg.
By stat. 22 *H.* 8. *c.* 12. the justices were to distribute themselves 22 H. 8. c. 12.
into several *divisions,* within which divisions respectively they
might license persons to beg.—By stat. 27 *H.* 8. *c.* 25. the seve- 27 H. 8. c. 25.
ral *hundreds, towns corporate, parishes,* or *hamlets,* were required
to *sustain* the poor with such charitable voluntary alms, as that
none of them might of necessity be compelled to go openly in
begging, on pain that every person making default should forfeit
20*s.* a month. And the churchwardens or other substantial in-
habitants were to make collections for them with boxes on *Sun-
days,* and otherwise at their discretions. And the minister was to
take all opportunities to exhort and stir up the people to be liberal
and bountiful.—By stat. 1 *Ed.* 6. *c.* 3. houses were to be provided 1 Ed. 6. c. 3.
for them by the devotion of good people, and *materials* to set
them on *work;* and the minister, after the *gospel* every *Sunday,*
was specially to exhort the parishioners to a liberal contribution.
—By stat. 5 & 6 *Ed.* 6. *c.* 2. the collectors of the poor on a cer- 5 & 6 Ed. 6.
tain *Sunday* in every year, immediately after divine service, *were* c. 2.
to take down in writing what every person was willing to give
weekly for the ensuing year, and if any should be obstinate and
refuse to give, the minister was gently to exhort him; if he still
refused, the minister was to certify such refusal to the bishop of
the diocese, and the bishop was to send for him to induce and
persuade him by charitable ways and means, and so according to
his discretion to take order for the reformation thereof.—By stat.
5 *Eliz.* *c.* 3. if he stood out against the bishop's exhortation, the 5 El. c. 3.
bishop was to certify the same to the justices in sessions, and
bind him over to appear there; and the justices at the said ses-
sions were again gently to move and persuade him, and finally, if
he would not be persuaded, then they were to assess him what
they thought reasonable towards the relief of the poor, and in
case of refusal were to commit him till paid.—By stat. 14 *Eliz.* 14 El. c. 5.
c. 5. power was given to the justices to lay a general assessment,
and this hath continued ever since, for the stat. 43 *Eliz.* *c.* 2.
is only re-enacting of former provisions with very little alteration.

By stat. 43 *Eliz.* *c.* 2. (*a*) § 1. The churchwardens and overseers 43 El. c. 2. Making a rate.

(*a*) The statute of *Elizabeth* was passed to enforce (what are called) duties of imperfect obligation. For it was a duty before that statute was made, to re-

43 El. c. 2. of the poor of every parish, or the greater part of them, shall, by and with the consent of two or more justices in the same county, dwelling in or near the same parish or division where the same parish doth lie, raise weekly or otherwise (by taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes impropriate, propriations of tithes, coal mines or saleable underwoods in the said parish, in such competent sum and sums of money, as they shall think fit,) a convenient stock of flax, hemp, wool, thread, iron, and other ware and stuff to set the poor on work: And also competent sums of money, for and towards the necessary relief of the lame, impotent, old, blind, and such other among them, being poor, and not able to work; and also for the putting out poor children to be apprentices.

§ II. (1.) Who are to make the Rate.

Concurrence of the inhabitants not necessary.

The churchwardens and overseers.] *Tawney's case, H. 2 Ann. 2 Ld. Raym.* 1009. *2 Salk.* 531. 1 *Bott*, 77. 1 *Nol. P.L.* 61, 62. The concurrence of the inhabitants in making a rate is not at all necessary; for by these words the churchwardens and overseers may make one without them.

Mandamus to compel the making a rate.

Shall.] And the court of King's Bench will grant a *mandamus* to compel overseers to make a rate. *Rex* v. *Barnstaple*, 1 *Barnard.* 137. 1 *Bott*, 78. *Lidleston* v. *Mayor of Exeter*, 1 *Bott*, 77. *Rex* v. *Weobly*, 1 *Bott*, 112.

But not the making of an equal rate.

But the Court will not grant a *mandamus* to make an *equal* rate, because it is to be presumed the overseers will do justice, and if they do not, there is a proper remedy by appeal to the sessions. *Rex* v. *Barnstaple*, 1 *Barnard.* 137. 1 *Bott*, 78. 1 *Nol. P.L.* 62.

§ II. (2.) What are the Purposes, and what the Time for which it may be made: and also of the Reimbursement of Overseers.

The statutes declaring the purposes for which a poor rate may be made are many, in addition to the 43 *Eliz. c.* 2. (*a*) It has been seen, that by this last-mentioned statute the purposes for which a rate might be made were, for setting to work the children of those poor who are not themselves able to keep them: also, all persons not able to maintain them, and using no ordinary trade of life to get their living by; and for the putting out poor children apprentices. The remaining sections of this act contain various regulations relating to the conduct and duty of overseers.

43 Eliz. c. 2. § 2.

9 G. 1. c. 7. Stat. 9 *Geo.* 1. *c.* 7. relates to the mode in which the poor shall (in particular cases) be relieved; and it also gives the churchwardens and overseers power and authority, with the consent of

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lieve the poor and necessitous. And the provisions of that act were adapted to the enforcing of those duties in the only way in which they could be enforced, namely, by raising a fund from persons who are deemed competent to pay it. *Per Ld. Kenyon* C.J. 4 *T. R.* 775.

(*a*) See more particularly stats. 22 *G.* 3. *c.* 83. § 20. 42 *G.* 3. *c.* 74. 43 *G.* 3. *c.* 110. § 1, 2. 59 *G.* 3. *c.* 12. § 8. to 16. 36 *G.* 3. *c.* 10. § 1. and 52 *G.* 3. *c.* 73.

the major part of the parishioners, to purchase houses, and contract with any persons for the lodging, &c. of the poor: (see this stat. more fully set out (*post*). 9 G. 1. c. 7.

Stat. 18 *Geo.* 3. *c.*19. relates to re-payment to constables of the money expended by them in the relief and removal of poor persons, and of vagrants. 18 G. 3. c. 19.

And see also stat. 41 *Geo.* 3. U.K. *c.* 23. § 9. *post.*

Expenses of litigating questions of settlement.

In *Rex* v. *Inhab. of Essex, E.* 32 *Geo.* 3. 4 *T. R.* 595. 1 *Nol. P. L.* 63. It was said, *per Ashhurst* J., to have been the constant practice to allow the expences of litigating the questions of settlement consequent upon the removal of paupers, to be defrayed out of the parish stock; the legality of which had never been disputed. (*a*)

After overseers are out of office, a rate cannot be made to reimburse money laid out by them whilst in office, but an overseer may make a new rate for the relief of the poor, and out of that retain to pay himself.

In *Tawney's case,* 2 *Salk.* 531. 1 *Nol. P. L.* 68, 69. *Tawney,* being overseer of the poor, laid out his money in the relief of the poor, and was turned out of his office by the justices before the end of the year: by which means he lost the opportunity of making a rate to reimburse himself. Upon this he applied to the court of K. B. for a *mandamus* to the churchwardens and overseers to make a rate to reimburse him.—By *Holt* C. J. We cannot order the parish or overseers by a *mandamus* to make a rate to reimburse an overseer, but only to raise money for the relief of the poor; nor can they make a rate otherwise. The act of parliament is expressly so, and must be pursued. An overseer is not bound to lay out money till he have it: if he do, he must make a new rate for the relief of the poor, and out of that he may retain to pay himself. *Tawney* should have done so; he trusted where he need not have done it. He hath not pursued the means the statute gave him, and we cannot relieve him.—And by the whole court. The *mandamus* lies not.

An overseer for several successive years cannot in the last year make a rate to reimburse himself for the preceding years.

Also in *Rex* v. *Goodcheap, H.* 35 *Geo.* 3. 6 *T. R.* 159. 1 *Bott,* 108. 1 *Nol. P. L.* 69. It was determined, that where a person is appointed an overseer for four successive years, and does not make any rate in the three first years to reimburse himself what he expends in those three years, he cannot in the fourth year make a rate for that purpose: and Ld. *Kenyon* said it was impossible to raise any doubt upon the question. That the overseers ought not to include in their accounts charges for several years, but all the items of the accounts should be confined to that year when the accounts are directed by the act to be passed.

41 G. 3. U.K. c. 23. Succeeding churchwardens and overseers empowered to repay money expended by preceding churchwardens, &c. for the maintenance of the poor, while there was no

But now by stat. 41 *Geo.* 3. U.K. *c.* 23. § 9. after reciting that whereas it may have happened that the churchwardens and overseers of the poor have not been able to collect a sum sufficient for the relief and maintenance of the poor, but they or the guardians of the poor have advanced and expended considerable sums for that purpose; it is enacted, that the churchwardens and overseers, or any of them, out of any money they shall collect in pursuance of any rate for the relief of the poor, may reimburse the preceding churchwardens and overseers or guardians such sums as *they* or any of them *have* heretofore *advanced* or expended for the relief or maintenance of the poor of such place *during the time that no rate or assessment for the relief thereof has been made, or during*

(*a*) *Quære.* Whether the expences of a valuation of the property of a parish which has been directed by a majority of the vestry, can be legally defrayed out of the poor rate? See 1 *Nol. P. L.* 67. note (3).

41 G. 3. U. K. c. 23.

rate: or during an appeal: and in default of such repayment the quarter-sessions, on application being made to them, shall make an order for payment.

the time that any appeal has been depending which affected the whole of such rate or assessment, or upon hearing of which the whole might be quashed; and, in default of payment of such money so advanced and expended within fourteen days next after demand in writing, such preceding churchwardens and overseers or guardians, or any of them, may apply to the then next general or quarter sessions, giving due notice in writing of such application to the then churchwardens and overseers, or any two of them; and such court shall examine the parties and witnesses upon oath, and shall make an order upon the then churchwardens and overseers, or any of them, out of the money collected or to be collected by them or any of them in pursuance of any rate made for the relief of the poor, to pay such sum to the preceding churchwardens and overseers or guardians, or any of them, as the said court shall think fit; and such sums so ordered to be paid may be levied by distress, and by all such other ways and means as the poor rate may.

Rate cannot be made to repay money borrowed, though for building or repairing workhouses.

Rex v. *Wavell*, *E.* 19 *Geo.* 3. *Doug.* 116. 1 *Bott*, 102. 1 *Nol. P. L.* 68. On a rule to shew cause, why a rate for the relief of the poor of the parish of *Effingham* in the county of *Surrey*, and an order of sessions confirming the rate, should not be quashed, the sessions had refused to state a special case; but the counsel for the appellants being of opinion that the rate would appear to be bad from the title of it, they removed it by *certiorari*, and obtained the present rule. The title of the rate was as follows: "*Surrey* to wit. An assessment on all and every the occupiers of lands and houses in the parish of *Effingham*, for the necessary relief of the poor, and *towards payment of money borrowed for repairing and rebuilding the workhouse*." In support of the rate it was contended, That the title of the rate would undoubtedly have been good, if it had been only "An assessment for relief of the poor," and that the acts and orders of magistrates (except convictions) are entitled to every intendment from the court that can support them, and therefore that the court would intend the whole money to have been assessed for the first purpose expressed in the title (if it should be thought that the other was not within the statute), and would reject the additional words as surplusage: That if the present objection was founded in law, the proper method of getting at it would have been by an appeal from the allowance of the overseers' accounts. However, this purpose of building or repairing a workhouse was manifestly within the spirit of the statute, since it would be in vain to provide for the sustenance of the poor, without being able to furnish them with a lodging. On the other side, it was said to be a general rule without exception, that the parish officers cannot borrow money for any purpose whatever.—— Ld *Mansfield* C. J. was absent.— *Willes* J. Can we reject as surplusage what is a material part of the title of the rate? If we cannot, is a rate good to repay money borrowed? *Tawney*'s case (*ante*, p. 45.) is in point. And as to an appeal against the overseers' accounts, is a parishioner obliged to pay money, and be turned round in that manner to get it back if levied without authority? The rate cannot be supported.— *Ashhurst* J. of the same opinion. — *Buller* J. This rate imports to be made for two purposes, and we are desired to consider it as only made for one. I conceive that a rate cannot be made for money borrowed, even though within the year. *Tawney*'s case

goes that length; for it is not confined to the *mandamus*. The rule for quashing was made absolute. (*a*)

In *Rex* v. *Glyde*, *H.* 53 *Geo.* 3. 2 *M.* & *S.* 323. Ld. *Ellenborough* C. J. said, We have no doubt on the face of the order, that the overseer has no title to a salary for any meritorious services, or for any services at all. **Nor for payment of overseers' salary.**

But by stat. 59 *Geo.* 3. *c.* 12. § 7. It shall be lawful for the inhabitants of any parish in vestry assembled, to nominate and elect any discreet person or persons to be *assistant* overseer or overseers of the poor of such parish, and to determine and specify the duties to be by or* them executed and performed, and to fix such yearly salary for the execution of the said office as shall by such inhabitants in vestry be thought fit; and it shall be lawful for any two of H. M.'s justices of the peace, and they are hereby empowered, by warrant under their hands and seals (*b*), to appoint any person or persons who shall be so nominated and elected to be assistant overseer or overseers of the poor, for such purposes, and with such salary as shall have been fixed by the inhabitants in vestry; and such salary shall be paid out of the money raised for the relief of the poor, at such times and in such manner as shall have been agreed upon between the inhabitants in vestry, and the respective persons so to be appointed. **59 G. 3. c. 12. *Assistant* overseer may be appointed and paid.** ***Sic.***

Rex v. *Bird and others*, *E.* 59 *Geo.* 3. 2 *B.* & *A.* 522. The expences, which are to be allowed a constable out of the parish rates, are those necessarily incurred by him on behalf of the parish, as relieving or conveying vagrants, &c. within 18 *Geo.* 3. *c.* 19. § 4.; but the expences of indicting a party for assaulting him in the execution of his duty, are not expences so incurred, although the prosecution was directed by a magistrate. See also *Rex* v. *Seville*, *ante*, Vol. I., *tit.* "Constable," § VII. **Expences of indictment for assault on constable not allowable out of poor rate.**

For what Time a Poor Rate may be made.

Raise weekly or otherwise.] *Durrant* v. *Boys*, *H.* 36 *Geo.* 3. 6 *T. R.* 580. 1 *Bott*, 80. 1 *Nol. P. L.* 66. A poor rate may be made prospectively: and if it were made for six months, it would not (it seems) be bad on that account. — Ld. *Kenyon* C. J. **Rate may be prospective.**

(*a*) The same principle prevails in equity as to church rates, even where the money sought to be reimbursed had been laid out in pursuance of an order of vestry. See *Lanchester* v. *Thompson and others*, 5 *Madd.* 64., and *Burn's Eccl. Law*, 8*th edit.* by *Tyrwhitt*, Vol. I. p. 305. note (8), and Vol. IV. Addenda, *tit.* Churchwarden.

(*b*) Form of Appointment of an Assistant Overseer.

Staffordshire } to wit. } *WHEREAS the inhabitants of the parish of* —— *in the county of* Stafford *in vestry assembled, in the said parish, on the* —— *day of* —— *last past, did nominate and elect* A. O. *of* [insert his addition] *to be an assistant overseer of the poor of the said parish, and did determine and specify that he should* [here insert the particular duties specified by the inhabitants to be performed by the assistant overseer, as the collection of rates, &c. if he is to perform the general duties of an overseer, say,] *execute and perform all the duties of the office of an overseer of the poor of the said parish, and did fix the yearly sum of* —— *l. as and for the yearly salary of the said* A. O. *for the execution of his said office. Now we, two of his majesty's justices of the peace in and for the said county, in pursuance of the statute in such case made and provided, do hereby appoint the said* A. O. *to be an assistant overseer of the poor of the said parish, and we do hereby authorise and empower him to execute and perform the said duties and to receive the said salary so as aforesaid fixed by the said inhabitants in their said vestry. Given under our hands and seals this* —— *day of* —— *in the year of our Lord* 18—.

said, Every person who is conversant in matters of this kind, knows the impossibility of foreseeing and providing for every expence that may arise: and therefore a rate may be made prospectively, not indeed wantonly, but such as is adapted to the probable exigences of the parish.

A standing rate cannot be made by the justices.

Rex v. *Audley*, *M.* 12 *W.* 2 *Salk.* 526. 1 *Bott*, 110. 272. 1 *Nol. P. L.* 3*d edit.* 192. A rate was agreed on in 1665 by the inhabitants of *Audley*, which had been followed ever since till the last year, when a new rate was made. On appeal to the sessions, the new rate was quashed, and the old one ordered to stand. By *Holt* C. J. The old rate, however just at first, may be unequal now; and therefore the justices cannot make a standing rate.

§ II. (3.) Upon whom (in respect of themselves personally) the Rate may be made.

"*By taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes impropriate, propriations of tithes, coal mines, or saleable underwoods in the said parish.*"

The words "inhabitant, parson, vicar, and other," include all those who possess property not coming within the several species of it described in the next following part of the same clause of the act: and they are so clear as to need no explanation.

What is designated by the term "occupier," and who is the occupier intended by the statute, may be learnt by the following cases. And as to the latter, viz. who is the occupier intended, it will be seen that every person occupying what produces profit, whether to himself or to the person under whom he holds, is the occupier intended by the statute.

Occupiers residing in another parish.

Jeffrey's case, *M.* 31 & 32 *Eliz.* 1 *Bott*, 122. 1 *Nol. P. L.* 72. — *W. J.* had and occupied or received rent for thirty acres of land in *H.*, but was himself an inhabitant of *C.*, in the same county, and never did inhabit in *H.* He was assessed to the church rate of *H.* at so much *per* acre for his land there. And upon application to *K. B.* for a prohibition to stay proceedings against *J.* in the spiritual court for payment of the assessment, it was resolved, that although the house he dwelt in was in another parish, yet as he had lands in *H.* in his proper possession and manurance, he was in law a parishioner of *H.* That by manuring lands in *H.* he was by that resident upon it, and was therefore a parishioner of *H.*, as to this purpose. But when there is a *farmer* of the same lands, the lessor shall not be charged for them in respect of his rent; and see *Burn's Eccl. Law*, 8*th edit.* by *Tyrwhitt*, Vol. I. p. 350. n. (9).

Corporate body.

A corporate body is also rateable, as will be seen in the case of *Rex* v. *Gardner and others*, *post*, 53.

And in *Rex* v. *Aberaven*, *M.* 45 *Geo.* 3. 5 *East*, 453. 1 *Nol. P. L.* 149. 3*d edit.* where the question was, Whether a corporation or certain individuals were rateable? It was not doubted that a corporate body might be rated.

Occupier to pay, and not landlord.

The farmer or occupier shall pay this tax, and not the landlord, who is never to be taxed for his rent, for then the landlord would pay twice.

59 G. 3. c. 12.

Stat. 59 *Geo.* 3. *c.* 12. § 19., after reciting, that "whereas in many parishes, and more especially in large and populous towns,

the payment of the poor's rates is greatly evaded, by reason that great numbers of houses within such parishes are let out in lodgings, or in separate apartments, or for short terms, or are let to tenants who quit their residences, or become insolvent before the rates charged on them can be collected; and it hath been found, that in many instances the persons letting such houses do actually charge and receive much higher rents for the same, upon the ground and expectation that the occupiers thereof cannot be effectually assessed to the poor's rates, and will not be charged with or required to pay such rates, and do thus obtain an undue advantage to themselves; and by means of the premises the other inhabitants of such parishes are unjustly compelled to pay much more than their fair and due proportions of the charges of relieving and maintaining the poor; for remedy thereof, enacts, that after the 1st of *January* 1820, it shall be lawful for the inhabitants of any parish, in vestry assembled, and they are hereby empowered, to resolve and direct, that the owner or owners of all houses, apartments or dwellings in such parishes, being the immediate lessor or lessors of the actual occupier or occupiers, which shall respectively be let to the occupiers thereof at any rent or rate not exceeding 20*l*., nor less than 6*l*. by the year, for any less term than one year; or on any agreement by which the rent shall be reserved or made payable at any shorter period than three months, shall be assessed to the rates for the relief of the poor, for or in respect of such houses, apartments, or dwellings, and the outhouses and curtilages thereof, instead of the actual occupiers; and the inhabitants so assembled in vestry may, and they are hereby authorised from time to time to rescind, renew, vary, and amend every such resolution and direction as they shall see occasion, so as no such resolution or direction shall extend to assess or charge the owner of any house, apartment, or dwelling, which shall, with the out-houses and curtilages thereof, be let at a greater rent than 20*l*., or less than 6*l*., as aforesaid; and the churchwardens and overseers of the poor of every such parish are hereby empowered and required to carry into effect all such resolutions and directions of the inhabitants in vestry assembled, and in pursuance and execution thereof, in all rates to be by them made for the relief of the poor, to assess by a fair and equal pound rate the owner or owners, being the immediate lessor or lessors of the actual occupier or occupiers, of every house, apartment, or dwelling to which such resolution and direction shall extend, for or in respect of the same, according to the actual rent at which every such house, apartment, or dwelling shall be let, after making a reasonable deduction from such rent, not exceeding in any case one-half of the same; and upon non-payment of the sum or sums so to be assessed, the same may and shall be levied upon, and the payment thereof be enforced against, such owner and owners, lessor and lessors, so to be assessed, and his and their goods and chattels, in like manner as rates for the relief of the poor may by law be levied and recovered, and the payment thereof enforced, upon and against any actual occupier on whom the same are charged.

59 G.3. c.12.

Power to rate owners of certain houses instead of the occupiers.

§ 20. Provides, that the goods and chattels of every occupier of any such house, apartment, or dwelling, which shall be found in and about the same, shall be liable to be distrained, and sold

Goods of occupiers may be distrained for rates

59 G.3. c.12.

to the amount of the rent actually due.

for raising so much of any such rate or assessment being in arrear, as shall have become due during the occupancy of the person or persons whose goods and chattels shall be so distrained (to be ascertained in a summary way by the justices granting the warrant of distress), so that in no case any greater sum be raised by distress of the goods and chattels of any such occupier, than shall, at the time of making such distress, be actually due from such occupier for rent of the premises on which such distress shall be made: Provided also, that every occupier who shall pay any such rate or rates, or upon whose goods or chattels the same or any part thereof shall be levied, shall and may deduct the amount of the sum which shall be so paid or levied, out of the rent by him or them payable; and such payment shall be a sufficient discharge to every such occupier for so much of the rent payable by him as he shall have paid, or as shall have been levied on his goods and chattels, of such rate, and for the costs of levying the same.

Occupiers paying rates empowered to deduct the amount out of their rent.

Receivers in certain cases may be rated as owners.

§ 21. Provides, that every person receiving or claiming the rent of any such house, apartment, or dwelling, for his or her own use, or receiving the same for the use of any corporation aggregate, or of any landlord or lessor who shall be a minor, under coverture, or insane, or for the use of any person who shall not be usually resident within twenty miles from the parish in which any such house, apartment, or dwelling shall be situated, shall for this purpose be deemed and taken to be and shall be rateable as the owner thereof.

Persons rated as owners may appeal;

and may vote in vestries.

§ 22. Provides, that every person to be rated as the owner of any such house, apartment, or dwelling, who shall think himself or herself aggrieved by any such rate, shall have such and the like remedy by appeal against the same, as any other person thereby rated; and every person so rated shall be entitled, as an inhabitant of the parish in and for which he shall be assessed, to be present and to vote in every vestry or meeting of the inhabitants thereof, for the execution of the laws for the relief of the poor, or for the consideration of any matter or question in relation thereto, in like manner as the inhabitants of the said parish.

No owner, not being an occupier, to be rated, in places where the right of voting for members to serve in parliament depends on the rating.

§ 23. Provides, that nothing in this act contained shall extend to give any power or authority to assess the owner (not being the occupier) of any house, apartment, or dwelling, in any city, borough, or town corporate, in which the right of voting for the election of members to serve in parliament shall depend upon the assessment of the voter to the poor's rate, or to vary or affect the manner of assessing and charging any of the inhabitants or occupiers of houses, lands, or tenements, within any such city, borough, or town corporate.

The reason why the occupier in general is to be so charged is, that the poor rate is not a charge upon the land, but upon the occupier in respect of the land. *Case* v. *Stephens, Fitzg.* 207. 1 *Nol. P. L.* 71.

The court will not decide who should be inserted in the rate, and who should not.

Of every inhabitant.] *Rex* v. *The Churchwardens of Weobly, T.* 19 *Geo.* 2. 2 *Str.* 1259. The Court refused to grant a *mandamus*, directing them to insert particular persons in the poor rate, upon affidavits of their sufficiency, and being left out to prevent their having votes for parliament men: for that the remedy was by appeal, and this Court never went further, than to oblige the making the rate, without meddling with the question, Who is

to be put in or left out? of which the parish officers are the proper judges; subject to an appeal.

By Sir *Anthony Earby's case*, 1 *Bott*, 124. 1 *Nol. P.L.* 71., it was determined that no inhabitant is to be taxed by a parish in regard of any estate he hath elsewhere in any other town or place, but only in regard of the visible estate he hath in the town where he doth dwell.

Inhabitant not to be rated for estate in another parish.

And by *Holledge's case*, *M. Jac.* 1. 1 *Bott*, 123. It was determined that the lessee of a stall in a market town, who came there weekly to the market to sell his wares, was not rateable to the repairs of the church; and that if a man take up his lodging for a week in a town, he shall not be so charged.

Lodger or stall-keeper.

Rex v. *St. Mary the Less, Durham*, *M.* 32 *Geo.* 3. 4 *T.R.* 477. 1 *Bott*, 120. 1 *Nol. P.L.* 171. 177. Was an appeal for being overrated for the whole instead of a part of a house: the sessions amended the rate, and also stated, that the appellant purchased the premises and repaired them, but neither he nor any other person resided therein, except as hereafter mentioned, but he kept the key. In one of the rooms the appellant kept a lathe for his amusement, and had sometimes a fire in that room, and three chairs and a table; and in another room he kept corn for his horse; and he also occupied the garden, worth 40*s.* a-year, and the gardener sometimes put his flower-pots, shrubs, &c. and some of his working tools, into another part of the dwelling-house, where other lumber was also put, but no person had ever slept or lodged in the house, nor had any furniture been kept there, (except as above). The appellant, out of charity, had permitted a poor man and his wife to live rent free in the kitchen, between which and the rest of the house the door of communication was stopt up. The stable had not been for upwards of two years used for any other purpose than as a dog-kennel. *By the Court.* As this person occupied the garden and part of the house, his servants other parts, and a poor man another part, but those occupations were not distinct from his own, he ought therefore to be rated for the whole, for it would be attended with great inconvenience to have to enquire in each particular case what rooms of a house the owner occupied before he could be rated.

If the owner of a house occupy a part thereof only, but his servants occupy other parts, and no one reside in the house but a poor person permitted to do so out of charity, the owner is rateable as occupying the whole.

In *Rex* v. *Aberystwith*, *M.* 49 *Geo.* 3. 10 *East*, 354. 1 *Nol. P.L.* 171, 172. The appellant, being surgeon of a militia regiment, was occasionally absent from home, and left an assistant in a part of his house: his wife and daughter also were absent, and the assistant had only the use of the shop, the remainder of the house being completely parted off from it. The garden was taken care of by a person paid by the appellant, and the person with whom the key of the house was left, permitted a friend of the appellant's and his servants to lodge there. The house was always ready for the appellant's return. The Court decided that such person was rateable for the whole house, for that he must be taken to have been, under these circumstances, the occupier of the whole house.

Who shall be said to be a Beneficial Occupier, and, as such, to be rateable to the poor rate.] In *Rex* v. *Waldo*, *T.* 23 *Geo.* 3. *Cald.* 358. 1 *Bott*, 166. 1 *Nol. P.L.* 184. It appeared that Mr. *Waldo*, about sixteen years before, pulled down a house for which he was rated to the poor eight guineas a-year, and built on the same spot a new one, in which ten poor girls were educated, main-

A person who builds an alms-house is not rateable, if no profit be made of it.

tained, and brought up on his charity; he provided a woman to superintend and instruct them. She and the ten girls were the only inhabitants, and the house was solely appropriated for this purpose; Mr. *W.* was rated for this house. Ld. *Mansfield* C. J. Mr. *W.* makes no profit of this building; and it is sufficient that this is so in fact, and the profit is in fact here applied to public and charitable uses.

The preceding was a case where the *person dedicating the property* to charitable purposes, and making no profit of it, *was held not rateable* for it. In another class of cases the question has been, Whether the occupants themselves of such property were rateable?

Persons living on a charitable foundation for their own benefit, are rateable.

As in *Rex* v. *Munday and others, T.* 41 *G.*3. 1 *East,* 584. 1 *Bott,* 223.* 1 *Nol. P.L.* 186. In which it appeared, that the persons rated were the objects of a charitable foundation, in the actual occupation of the almshouse and charity lands, and of certain stock upon the same, (being the increase of stock originally given with the house, &c. by the will of the founder,) together with a certain wood, which they were bound to fence at their own charges; and also that they were liable to be dismissed whenever they infringed upon the rules of the foundation; and that they were maintained solely by this charity. Under these circumstances the Court held that these persons were justly rated; for that the 43 *Eliz. c.* 2. is general, the rate for the relief of the poor being to be levied upon *every occupier of lands, houses, &c.:* and there is no exception of lands devoted to charitable purposes. And that in the present case there was a beneficial occupation.

There is another class of cases in which the question has arisen upon the rateability of hospital lands, and the hospitals themselves, which have been determined upon the same principle, viz. Whether there be a beneficial occupation or not?

Hospital lands are rateable.

In *E.* 1 *Ann.* 2 *Salk.* 527. 1 *Bott,* 125. By *Holt* C.J. Hospital lands are chargeable to the poor, as well as others; for no man by appropriating his lands to an hospital can exempt them from taxes to which they were subject before, and throw a greater burthen upon his neighbours.

The officer of a college is rateable for the apartment he inhabits in the college.

In *Ayre* v. *Smallpeace,* 24 *Geo.*2. 1 *Bott,* 131. 1 *Nol. P.L.* 154.178. it was decided that the comptroller of *Chelsea* college, residing in the college, was rateable to the poor of the parish, for having apartments *distinctly and separately to his own use.*

Those parts of a lunatic hospital which are appropriated to its particular objects are not rateable, but such as are occupied by others (excepting servants who attend for their livelihood), are rateable.

But in the case of *St. Luke's* hospital for lunatics, *M.* 1 *Geo.* 3. 2 *Burr.* 1053. 1 *Bott,* 132. 1 *Nol. P.L.* 177. 184. It appeared, that certain lands were demised to certain lessees for the purpose of erecting an hospital for lunatics: that 29 houses standing upon these lands, were pulled down, and the hospital erected; that the whole hospital was divided into cells for the lunatics, offices for their sustentation, &c., and apartments for the servants who were hired to attend them: and that the whole was supported by voluntary contributions; and that *J. M.* one of those who were rated was the principal hired servant, living in the hospital, and that the others who were rated had not nor could have any benefit from the possession or occupation thereof.—Ld. *Mansfield* C. J. delivered the opinion of the Court. He said, cases of this kind must depend on the nature of the respective hospitals. That proprietors of lands might convert them into a state in which they could

not be rated to the poor. That nominal trustees could not be rated; that servants could not be rated excepting for their own particular apartments, and it was not here stated that there were any such; and that the *objects* of *this* charity certainly could not. That, therefore, as no occupier could be found to be rated, there could be no rate at all.

In *Rex* v. *St. Bartholomew's the Less*, *T.* 9 *Geo.* 3. 4 *Burr.* 2435. 1 *Bott*, 139. 1 *Nol. P. L.* 160., it appeared that houses were pulled down, and upon the site of them several buildings were erected, and an area was inclosed for the use of the hospital. The mayor and commonalty of *London*, (being the governors of the hospital,) were rated to the poor rate in respect of the said buildings and area. By Ld. *Mansfield* C. J. The poor rate must be charged upon the *occupiers*. In the case of *St. Luke's* hospital and in that of *Chelsea* hospital, the *officers* were rateable as *occupiers*. Here the *corporation de facto* are not, *de facto*, the occupiers. The *poor* are occupiers; but *they are not rateable.*

The rate must be charged upon the occupiers. And the governors of an hospital, or the poor persons, or the servants are not such occupiers as can be rated.

By stat. 48 *Geo.* 3. *c.* 96. intituled, "*For the better care and maintenance of lunatics being paupers or criminals in* England," § 26. it is enacted, "that in all future rates, taxes, and levies to be made for any parish or place in which any land or ground to be purchased for the purposes of this act shall be situate, such land or ground with any building to be erected thereon shall not be assessed to any such rates, taxes, or levies, at a higher value or more improved rent than the same land or ground was at the time of such purchase."

48 G. 3. c. 96. Assessment to rates for land taken for lunatic asylums not to be increased.

Rex v. *Gardner*, 1 *Bott*, 143. 1 *Nol. P. L.* 178. The master and fellows of *Catherine Hall*, *Cambridge*, purchased several houses, and pulled them down, and converted part of the ground on which the said houses had stood into an area, and planted the same with trees for ornament. The parish assessed them for the same to the poor rate. The questions were, whether the master and fellows, being a body corporate, were liable to be rated, and whether the ground, as it was in its converted state, could be rated? — By Ld. *Mansfield* C. J. The question is, whether in law a corporation may be considered as *occupiers* or *inhabitants*? By the statute of *Eliz.* all lands and all real property are rateable to the poor; and must have *occupiers* and *inhabitants*, in respect of taxation: therefore, if a man have no tenant, and be seised of lands in fee, he is said to occupy them himself, or by his bailiff or agent. No case hath been instanced to shew that a corporation is exempted from this tax; and I can find no authority in law which says they cannot be rated. And the authorities which have been cited tend to prove that corporations are rateable, both as *inhabitants* and as *occupiers*: if they are liable in respect of the repairs of *bridges* and of *churches*, they are equally so by the statute of *Elizabeth* in respect of the *poor*. As to the objection, that this area yields no profit, and therefore ought not to be rated, the answer is, that the value is in the judgment of the assessors; and if the college think themselves over-rated they have their remedy by appeal.—Mr. J. *Aston*. I have no idea but that the corporation may be occupiers; and as to the remedy of levying a duty upon a corporation, the books all agree that it can be levied, though they differ in the mode. *Sheppard*, in his treatise upon corporations, says, "If a sum of money be to be levied upon a corpora-

A corporate body are occupiers and inhabitants for the purpose of being rated, and the master and fellows of a college are therefore rateable as a corporation for what they beneficially occupy.

R. v. Gardner.

tion, it may be levied upon the mayor or chief magistrate, or upon any person being a member of the corporation." But in the case of the city of *London* concerning the duty of *water-bailage* (1 *Ventr.* 351.) it is different, and is thus: "*Note:* it was said that for a duty or charge upon a corporation, every particular member thereof is not liable; but process ought to go in their public capacity." And this is the right law. In the case of *Thursfield* v. *Jones*, (*Skin.* 27.) the corporation were cited, not by their proper names, but in their politic capacity; and the Court said, "If the company had neither land nor goods, there was no way to make them appear; but if they stood out, they must lie by the heels in their natural capacity." Therefore the idea that a corporation is not liable to be rated, or amenable by process in respect of a rate, is not well-founded. Besides, by the act of 17 *Geo.* 2. *c.* 38. the remedy of distress is extended beyond the particular parish into other precincts, and even into other counties. So that their property is answerable, though they cannot personally be punished. The other two justices concurred.

A schoolmaster occupying a house and garden belonging to the school, is rateable, although they were held by him as a recompence for teaching, &c.; he being a beneficial occupant.

So in *Rex* v. *John Catt*, *T.* 35 *Geo.* 3. 6 *T. R.* 332. 1 *Bott*, 213. 1 *Nol. P. L.* 176. 186. 189. it was determined that the master of a free-school appointed by the minister and inhabitants of the parish under a charitable trust, whereby a house, garden, and other property, were assigned for the use and habitation of the master and his family freely without payment of any rent, income, gift, sum of money, or other allowance whatsoever for or out of the same, for the teaching of ten poor boys, of the inhabitants of the parish; was rateable to the poor for his occupation of the same.

And Ld. *Kenyon* C. J. said, that the cases of *Waldo*, and of *St. Luke's* hospital, were determined on the principle that no *beneficial* occupier could be found.

The next class of cases in which the question of Beneficial Occupancy arises, consists of those in which there is an occupation for a particular purpose, or by virtue of some office.

Royal palaces in the occupation of the royal family are not rateable, but servants occupying house and land belonging to the crown are rateable.

Old Windsor or *Rex* v. *Mathews*, *H.* 17 *G.*3. *Cald.* 1. 1 *Bott*, 151. 1 *Nol. P. L.* 178. 192. 194. *Samuel Mathews* was rated to the poor rate for a keeper's lodge in *Windsor Great Park*, and two acres of land, which he occupied as one of the keepers of the said park, which rate was confirmed at the sessions.—And by the Court it was determined, that *royal palaces*, in the occupation of the royal family, are not rateable to the poor; but the servants occupying house and land belonging to the crown, whether they pay for the same by rent or by service, are rateable.

A beneficial occupier of the king's lands, whether by gift or for wages, is rateable for the same.

Ld. Bute v. *Grindall and another*, *T.* 26 *G.*3. 1 *T. R.* 338. 1 *Bott*, 173. 1 *Nol. P. L.* 174. 179. 194. This cause was tried at the assizes in *Surrey*, before *Gould* J., when the jury found a special verdict, which stated, *inter alia* that Ld. *Bute* was duly appointed ranger of *New Park* near *Richmond*, and had granted to him the custody of the houses, lodges, &c. and also the *herbage and pannage of the said park:* That some part of the park is enclosed land, some part thereof meadow, and some part arable land and sown with corn, rye-grass, and clover, in the ordinary course of husbandry: That the meadow has been always mowed, and the hay thereon made by persons paid by the king, who also found the hay seed; that 66 loads of hay when made have been always carried by the

king's waggons into the park for the deer, and the overplus was stacked up for the use of the king's horses, and the ranger's horses, and ate by them, but never any sold: That when the arable land was sown with corn, the ranger found the seed; and when with rye-grass or clover, the king found the seed; and was manured, ploughed, and sown by the king's servants and horses, and reaped by the ranger, and sold for his benefit, and the king had no part; that the straw was used for thatching the hay-ricks, and by the king's cart-horses: That *the profits arising to the ranger from the said lands are worth* 100l. *a-year;* but the herbage and pannage of the park have yielded no profit to the ranger.—By Ld. *Mansfield.* The question is, whether the plaintiff is rateable at all? Not for how much or in what proportion. It is clear he is not rateable for the herbage and pannage, *because they yield no profit;* but there is a parcel of land inclosed which he sows, and afterwards reaps the corn from, and the profits arising to the ranger from the said lands amount to 100*l.* a-year; therefore he is occupier; and *quo nomine* occupier can make no difference whether by gift or for wages.—*Buller* J. It is immaterial what interest the occupier has in the lands, whether he holds as tenant at will or any other tenure: it is not necessary to enquire into the occupier's title. Ld. Bute v. Grindall.

Lord Amherst v. *Lord Somers and others*, *E.* 28 *Geo.* 3. 2 *T. R.* 372. 1 *Bott*, 184. 1 *Nol. P. L.* 191. By warrant under the king's sign manual, a lease was entered into by Ld. *R. Bertie* with one *A.*, by which certain buildings were covenanted by *A.* to be built by him as a riding school, &c. for the use of a troop of the horse guards. Ld. *Amherst* succeeded Ld. *R. Bertie*, and had possession given him of the school, &c. and the buildings were used always for the purposes of the troop, and never in any manner for the private benefit of Ld. *Amherst.* The rent was paid by stoppages from the pay of the troop.—By *Ashhurst* J. It is admitted that neither the possessions of the crown, nor of the public, are liable to be rated to the poor; and as this property falls within one or the other of these descriptions, it is not rateable to the poor.—And by *Buller* J. In this case the plaintiff did not contract as general lessee, but merely for the benefit of the public, by order of the crown; and he made no use whatever of the stables. Therefore he cannot be considered as the occupier.

Stables rented by order of the crown for the use of a regiment, are not rateable, where the lessee himself does not occupy them on his own particular account.

Rex v. *Hurdis*, *M.* 30 *Geo.* 3. 3 *T. R.* 497. 1 *Bott*, 187. 1 *Nol. P. L.* 199. The appellant objected to the rate because one *Wood*, gunner of the king's fort and battery at *S.* who was a servant to his majesty, and not in his own right the occupier of the dwelling-house thereto belonging, and who therefore ought not to have been charged in the rate, was inserted therein, and charged as the occupier of the battery-house. At the time of making the rate, he was a head or master gunner, and acted as such at the fort or battery of *S.* The fort and battery-house are the property of the crown; and a master gunner is an officer appointed by the crown, and removeable at pleasure. *Wood* being so employed, *occupied* the whole of the house, except one room; the furniture belonged to him.—Ld. *Kenyon* C. J. I do not feel that my opinion upon this subject militates against any decided case, but I shall determine upon the ground of positive law, as it

A master gunner appointed by the crown, and *stated* to be occupier of the king's battery-house, is rateable.

is laid down in the 43 *Eliz.* which subjects *every occupier* of lands, houses, &c. to be rated to the relief of the poor. Now it is expressly stated in the case, that *Wood was the occupier of the battery-house;* and though perhaps it might have been contended below, that he was not the occupier, in the legal sense of the word yet the finding of the sessions precludes that question here. It is not, however, a general position, that a servant of the crown occupying a house in respect of his office, is not rateable for it. Soldiers indeed cannot be said to be the *occupiers* of their barracks, in the legal sense of the word; they are no more than mere servants. Therefore *Wood* was properly rated. *See R* v. *Ronton Abbey, ante, p.* 8.

Soldiers are not occupiers in the legal sense of the word.

Note. In the subsequent case of *Rex* v. *Terrott,* Ld. *Ellenborough* intimated that if soldiers in barracks were supplied with accommodation beyond what was strictly necessary, they would be rateable.

But may become so.

Rex v. *Terrott, E.* 43 *G.* 3. 3 *East,* 506. 1 *Bott,* 230. 1 *Nol. P. L.* 197. The appellant was an artillery officer. He had his quarters at a building fitted up at the expense of the crown. There were several apartments beyond what were necessary for the regimental business, and he resided in them with his family; the usual barrack furniture was provided by the crown. He was rated in respect of these apartments.—By Ld. *Ellenborough* C. J. The principle of the subject is, that if the party have the use of the building, or other subject of the rate as a mere servant of the crown, or of any public body, or in any other respect for the mere exercise of public duty therein, and have no beneficial occupation of, or emolument resulting from it in any personal and private respect, then he is not rateable. The property of the crown *in the beneficial occupation* of a subject, whether he be a civil or a military officer of the crown, is equally rateable. But if the use of or residence upon the property be either as *the servant* of the crown, and for public purposes only, or as a mere public officer or servant, or of any other description, the parties having the use of the property merely for such purposes, are not rateable; because the occupation is throughout that of the public, and of which public occupation the individuals are only the means and instruments. Rate confirmed.

Where residence is merely as a servant of the crown, and for public offices only, there the occupation is not rateable. The Rule as to public servants.

So also *Holford* v. *Copeland,* 3 *Bos. & Pull.* 139.

Rex v. *Woodward and another, M.* 33 *Geo.* 3. 5 *T. R.* 79. 1 *Bott,* 205. 1 *Nol. P. L.* 182. The trustees of a quaker meeting-house were rated to the poor for the meeting-house, the basement story of which is divided into many small rooms, one of which is occupied by a person called the door-keeper, whose business it is to attend the house when necessary, and keep the meeting-house clean, for which he has a small salary. The remaining apartments are either not occupied, or are appropriated to the use of poor persons maintained by the quakers. The meeting-house is solely appropriated to religious and charitable purposes. The trustees, the persons rated, do not receive any rent for the same. No pecuniary advantage whatever is made of the meeting-house.

The trustees of a meeting-house, of which no profit is made are not rateable.

The Court said, it was impossible to support this rate on the trustees, who had no interest in the premises; and that there was no occupier at present, nor any profit made of it.

Analogous to the above cases are these following, viz. *Robson* v. *Hyde,* esquire, *T.* 23 *Geo.* 3. *Cald.* 310. 1 *Bott,* 164. 1 *Nol.*

P. L. 187. In this case it was determined that a private building always used as a chapel, and by contract never to be used for any other purpose whatsoever, but not consecrated, is, if a profit be made of it by letting out the pews or otherwise, rateable to the poor. But if it were absolutely given to the public, it might be a strong ground for saying that it was not rateable.

A private building used as a chapel is rateable, if a profit be made of it.

Rex v. *Agar and others, T.* 51 *Geo.* 3. 14 *East,* 256. *Bott Cont.* 88. 1 *Nol. P. L.* 188, 189. In an assessment for the relief of the poor of *St. Martin, York,* the defendants were thus rated:

The trustees of a methodist chapel receiving money annually for the rent of the pews, are rateable for the profits made of the building, though in fact they expend the whole of what they receive in making disbursements for repairs, &c. and to attendants in the chapel, and in paying the salaries of the preachers.

" Messrs. *Agar* and *Gibson* — Chapel-rent 20*l.* — One month 15*s.* — Three months 2*l.* 5*s.*"

Against the assessment they appealed on the grounds that the methodist chapel therein mentioned was not liable to be rated, and that they (*the trustees*) were not liable to be rated in respect of it, not being the occupiers of it, nor having any beneficial or other interest therein which was legally the subject of a rate. The sessions confirmed the rate, subject to the opinion of the Court on these following facts: — In 1804 the appellants purchased a piece of ground upon which, by means of voluntary contributions, they erected the chapel in question. The premises were shortly afterwards conveyed to them, *upon trust,* that they should let the pews and seats in the chapel under such yearly or other payments as they might think fit, and upon other trusts (as by the deeds appeared more particularly): the consideration for the purchase of the ground, and the expense of erecting the chapel, were raised partly by voluntary donations, and partly by sums borrowed by the appellants. The current expences of the trustees in supporting the chapel during the year 1810, as appeared by the disbursements after mentioned, were 247*l.* 7*s.*; and the whole of the pew rents received for that year amounted to 221*l.* 4*s.*, which were applied towards the discharge of the following expenses, viz.

	£	s.	d.
Insurance from fire - - - - - - - -	2	5	0
To a year's rent and taxes of two dwelling-houses occupied by the two methodist preachers, ending 25th *Dec.* 1810 - - - - -	70	0	0
To chapel-cleaners and candle-snuffers - - -	20	16	0
(There were several items for work about the chapel, as painting, &c.; also for candles, and then the two following items, viz.)			
To one year's quarterage for salary and board allowed to two methodist preachers for officiating in the *York* chapel - - - - - -	110	0	0
To *Thomas Stodhart* for half a year's salary for conducting the singing in the chapel, ending 25th *Dec.* 1810 - - - - - - -	5	0	0
Making altogether	£247.	7	0

The point reserved by the sessions was, whether the appellants, under the above circumstances, were liable to contribute to the relief of the poor in respect of the rents or monies so received for the pews, and so applied as above stated. — After argument, Ld. *Ellenborough* C. J. said, the question is, whether the trustees

R. v. Agar and others.

are rateable? In what situation do they stand to the property? In 1804 they purchased the ground on which they afterwards erected the chapel; they are therefore the owners of the property. If they had gratuitously admitted persons into their chapel, and provided preachers for the congregation, without receiving any thing, they would have come within the case of *Rex* v. *Woodward and others*, 5 *T. R.* 79.; but observe the difference between the two cases; there it was found that the trustees did not receive any rent or other pecuniary advantage for the use of the seats in the quaker's meeting-house: here it is stated that the trustees do receive rent for the seats. What similitude then does this bear to *Waldo*'s case, *ante*, 51. who gratuitously devoted his property to the education and maintenance of paupers, but derived no profit to himself? Here profit is made of the property to the full by the trustees, who let out the seats, and receive pecuniary advantage from the use of them; and admitting that there must be some expences incurred in producing the profit, it depends upon circumstances, and the mode of administering the fund, what the profit shall be. If it were absolutely necessary that all the sums stated in the account of expenses should be expended, it should have been expressly found in the case that they were all *necessarily* expended in the carrying on the business of the chapel. The trustees may go on increasing their expenditure in this manner as their profits increase. I admit that it is not found that any of the items were fraudulently swelled for the purpose of this question; but it is not enough in these cases to shew that the expenses laid out in any particular year, absorbed the profits of that year: for the benefit of such expenses may be derived in future years, as is often the case, with improvements of farms, and rateable on that account. Whether these which are stated were necessary expences or not, I cannot take upon me to say from the case, but it should at least have been found that they were all *necessary*, to produce the render of the rent received. This is not like the cases where persons have been held not to be rateable for property, as not being in the occupation of it: for these appellants are the original proprietors of the land on which they have erected a chapel by voluntary subscription, under no restriction as to the profits to be derived from it, and in the actual receipt of rents, which they have applied in manner stated.— *Grose* J. The first question is, whether there is any thing rateable in this case? and here is clearly rateable property; for there is land, and a building which produces profit. But it is said that it does not produce profit sufficient to warrant a rate on these defendants in respect of it. But that depends upon the manner in which they choose to apply the proceeds. It does in fact produce profit, and they dispose of it as they please afterwards. How then does this differ from the case of other buildings which produce profit? If this be not rateable on account of the subsequent application of the profits by the trustees to the benefit of others, why should any estate which a man holds in trust be rateable? Then, 2dly, The trustees who receive the profits are the occupiers of the property, and therefore they are liable to be rated for it.—*Le Blanc* J. The subject-matter of this rate is within the stat. 43 *Eliz. c.* 2., which directs the occupiers of lands and houses to be rated. These appellants purchased the land,

and erected a building on it to be used as a chapel, and now let out the seats and receive the rents for them; they are therefore the occupiers of the building. Then the only question is, Whether they are liable to be rated for it on the ground that it is not valuable property? It is let out at an annual rent, but it is objected that though they receive profit in the first instance, yet they afterwards dispose of the whole in the establishment, in paying the salaries of the ministers, and in defraying other expenses of attendants and repairs. I agree that this is in substance a rate on the ministers, for if they had let out the pews and received the rents, they would only have received the surplus profit after payment of all the necessary expenses of the chapel; but the pews are let out by those who are in effect the trustees for the ministers, for they pay over to them so much as remains after defraying the expenses. The trustees, therefore, must be considered as the occupiers, because the property is in them, and they let out the pews, and they are therefore rateable for the profits in the same manner as the ministers themselves would be if these latter let out the pews.—*Bayley* J. The property itself is rateable, and the trustees are the proper persons to be rated for it. It is a house, and the stat. of *Eliz.* says that occupiers of houses are rateable. It produces profit, for certain sums are annually paid into the hands of the persons rated by those who rent the pews. Then it is objected, that part of the money so received which is applied to the salaries of the preachers, is referable to them and not to the house; and that if there were no preachers, there would be no pew-rents received: I agree that the money so received is partly referable to the preachers, but a part is also referable to the house itself, in respect to the superior accommodation afforded by it to those who attend the preacher: for such large sums would not be paid to hear them in the open air. This then is not like *Woodward*'s case, nor like the case of Mr. *Waldo*, who dedicated his property to the charitable purpose of educating and maintaining poor children; for there was no profit made of the meeting-house in the one case, or of the property dedicated to the charity children in the other; but here a profit was made of the property; and there is no hardship in saying that the trustees shall pay the rate, for they will stop *in transitu* so much as they pay for this purpose; and the ministers are not the proper persons on whom to impose the rate on the building in respect of their salaries. The trustees are not under any obligation to make the payments to the extent stated: they have paid the money in fact; but they were under no obligation to do so at all events. This, therefore, being property which in its nature is rateable, and profit being in fact made of it, and that profit passing in the first instance through the hands of the trustees, I see no doubt but they are rateable for it. Order and rate confirmed.

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Rex v. *Commissioners of the Navigation of Salter's Load Sluice to Stanground Sluice. T.* 32 *Geo.* 3. 4 *T. R.* 730. 1 *Bott*, 201. 1 *Nol. P. L.* 189. The defendants were assessed for the tolls of a sluice, which rate was confirmed at the sessions. It appeared that the tolls were directed by the act of parliament passed for the supporting of the sluice, " to be applied for the several purposes of the said act, and for no other whatever.—*Per* Ld. *Kenyon* C. J. It is not sufficient to point out property within the parish, but there must also be some beneficial occupant or oc-

There must be a beneficial occupant.

cupants. Corporations may unquestionably be rated. Here there is property which is the subject of a rate, but there is no occupier of it. Rate quashed.

R. v. Eyre.

Lessee of tolls of public bridge not rateable as such *per se*.

Rex v. *Eyre*, *E.* 50 *Geo.* 3. 12 *East*, 416. 1 *Nol. P. L.* 127. The defendant appealed against a poor's rate, wherein he was assessed as "lessee of the tolls of the *Key* Bridge" at *Tewkesbury*, at 350*l.* *per annum*. The sessions confirmed the rate upon the general principle, as they stated, that the rent *bonâ fide* paid by the occupier is the best criterion by which to judge of the value of the property, but subject to the opinion of this Court upon the following case:

By stat. 48 *Geo.* 3. *c.* lxii. Certain trustees are appointed for rebuilding the *Key* Bridge across the river *Avon* in the borough of *Tewkesbury*, and for making convenient roads thereto. It enacts, that out of the first monies arising by the tolls to be collected by virtue of the act, or out of the first money which should be borrowed upon the credit thereof, the trustees shall pay the expenses of passing the act; and repay sums advanced thereon with interest; and also all expenses of the plans and estimates of the bridge; "and that after payment thereof, all the money which should come to their hands for the purposes of the act, should be applied in erecting the turnpikes or toll-houses, and to other purposes relating entirely to the bridge and its avenues, and in defraying all the necessary charges of the act, &c. &c. and to or for no other use, intent, or purpose whatsoever."—"That as soon as the several purposes of the act should be carried into execution, and the principal and interest borrowed and secured thereon should be repaid, all the tolls thereby imposed should absolutely cease, and the new bridge and the approaches leading thereto should thereafter be repaired by such persons as were by law liable to repair the same." The trustees being empowered by another clause to lease the tolls under the clauses and stipulations therein expressed, have leased the same to the appellant at the annual rent of 350*l.* It was not proved that the appellant made any profit on the said tolls, nor that such tolls left any residue after the payment of the said yearly rent of 350*l.*; on the contrary, *it is believed*, that the present lessee has a most unprofitable taking, and that he will not even clear his present rent.—In support of the order it was stated, that the objections to the rate were, 1st, that the subject matter of it was occupied for public purposes, and was therefore not rateable at all; but, 2dly, if it were rateable in the hands of a lessee on account of any personal benefit derived to himself, it did not appear by the case as stated whether he derived any such benefit beyond the purposes of the trust. —But the Court, after observing upon the loose and imperfect manner in which the case was drawn up, in not stating either that the lessee was the *occupier* of any toll-house or dwelling-house within the parish, which was the proper subject-matter of a rate, or that he was an *inhabitant* of the parish in the sense which had been lately(a) put by the Court on that word in the 43 *Eliz. c.* 2., and in not finding the fact whether the lessee did receive any profit to himself from the tolls beyond the rent which was applicable to public purposes, but merely stating that *it was believed* that he did

(a) *R.* v. *Nicholson*, 12 *East*, 330., post, § II. 4 *f.* and 5. *Williams* v. *Jones*, id. 356., post, § II. 4 *f.* and 5.

not, were inclined to have sent the case back to the sessions to be re-stated in a more perfect manner. But in opposition to the rate, it being suggested that it would not answer any purpose to send the case back, all the facts having been stated which were capable of proof on the part of those who supported the rate, and that the only question meant to be raised by them was, whether the tolls of a public bridge were rateable in the hands of a lessee; — Ld. *Ellenborough* C. J. said, that as the Court had so recently decided that tolls *per se* were not rateable, and that as the appellant was rated merely as lessee of the tolls, and for nothing else which might have given them a corporeal quality, and locality within the parish, such as for a sluice or the like; and that as it did not appear that he was an *inhabitant* of the parish, or made any profit of the tolls, there was nothing stated in the case to raise any question. And though it should turn out to be the fact (which was suggested from the bar) that there was a toll-house attached to the bridge where the appellant dwelt, yet as the sending the case back to the sessions to be re-stated would probably only lead to their inserting as a fact what at present they only stated as matter of belief, that the lessee derived no profit to himself from the tolls, it was better for all parties to quash this rate, and if at any future time the parish thought they could make out a better case against the lessee, they might rate him again. *Per curiam*, order of sessions confirming the rate quashed.

Tolls *per se* not rateable.

Rex v. *Woodward and another*, 33 *G.* 3. 5 *T. R.* 79. 1 *Bott*, 205. 1 *Nol. P. L.* 182. A question arose upon the rateability of the trustees of a quaker's meeting-house; amongst other circumstances, it appeared that one small room was occupied by the door-keeper, who attended the house when necessary, and kept it clean, for which he had a small salary. And the court held that there was no rateable occupier.

Occupancy by a servant.

See also *Rex* v. *Sculcoates*, to the same point, *post*.

—— v. *Armstrong and others*, *Sitt. at West. after M. T.* 60 *G.* 3. 2 *Stark. C. N. P.* 543. 1 *Nol. P. L.* 178. This was an action of trespass brought to try the question, whether the plaintiff was liable to be rated to the poor's rate in respect of his occupation of a house. The house in question, was occupied by the plaintiff under the trustees of the navigation of the river *Lee*, having been appointed their surveyor; and it was situate on the river *Lee*, about half way between *London* and *Hertford*. It had been built out of the tolls arising from the navigation of the river, and the plaintiff occupied it for the purpose of superintending the business of the trustees. By the provisions of the act of parliament which regulated the tolls to be taken on this river, it was expressly directed that the tolls arising from the navigation should not be subject to the poor's rates. It was contended, that as the plaintiff was the servant of the trustees, who had no beneficial interest in the navigation of the river or in the tolls, he was to be considered as the servant of the public, and as exempted from the poor's rate: if the trustees had not built the house they must have paid for one out of the rates and duties collected on the river. — *Abbott* C. J. was of opinion, that the plaintiff was rateable in respect of this house. If he had received a salary out of the tolls, and had rented another house, he would clearly have been liable to be rated for it. Verdict for the defendants.

One who occupies a house as surveyor of the navigation of the river *Lee*, under the trustees of that river, held to be liable for poor's rates, although by act of parliament the tolls, &c. are exempted from being rated, and although the trustees have no beneficial interest, but act for the public.

§ II. (4.) What property is rateable;

(*a*) *Land, Houses, &c.*
(*b*) *Stock in trade.*
(*c*) *Household furniture, money, and funded property.*
(*d*) *Salaries, and wages of labour, &c.*
(*e*) *Tithes.*
(*f*) *Manors, and their profits.*
(*g*) *Mines.*
(*h*) *Woods.*
(*i*) *Commons, Way-leaves.*
(*k*) *Extra profits from land.*
(*l*) *Of increased value; and herein, of Docks, Navigation Tolls, &c.*

(*a*) Land, Houses, &c.

The first kind of real property mentioned in stat. 43 *Eliz. c.* 2. § 1. *ante*, p.43, 44. is "*Land and Houses.*"

All things which are real, and in yearly revenue, must be taxed to the poor. *Resol. of the judges of assize in* 1633. *Dalt.* 235.

The word "Land" includes not only the face of the earth, but every thing under it and over it. 2 *Blac. Com.* 18.

(*b*) Stock in Trade.

Personal estate.

The court of King's Bench, from the difficulties attending the matter in practice, have all along been averse from delivering any opinion upon the general question, whether, or how far, *personal estate* is liable to be rated to the poor; but have determined the several cases upon their own particular circumstances, or quashed the rates for insufficiency in point of form.

A farmer is not rateable for his stock.

Q. v. *Barking, H.* 5 *Ann.* 2 *Ld. Raym.* 1280. 1 *Bott*, 126. 1 *Nol. P. L.* 204. Upon quashing several orders made relating to the poor rates, the matter in difference was referred to the determination of the Ld. C. J. *Holt*; but the parties, not satisfied with his opinion, signified their consent in writing to submit this question to the opinion of the judges of the K. B.: to wit, whether a *farmer for his stock* shall not be chargeable and taxable to the poor rate, as well as a tradesman for his *stock in trade?* And the other three judges were of opinion that a farmer for his stock is not taxable, contrary to the opinion of *Holt* C. J. Whereupon the following rule of court was made: "Upon mature deliberation, it is considered by the Court, that a farmer is not taxable to the poor rate for his stock; and that a tradesman is taxable for his stock in trade," [Or, as it is expressed in the record, *Quod firmarius, anglicé*, a farmer, *non erit onerabilis et taxabilis ad ratus pauperum pro peculiis, anglicé*, stock; *et quod artifex, anglicé*, a tradesman, *est onerabilis et taxabilis pro peculiis, anglicé*, stock, *in arte, anglicé*, trade.]

Stock in trade of tradesmen, &c. rateable. *Quære*, If property which the

Rex v. *Witney in Oxfordshire, E.* 10 *Geo.* 3. 5 *Burr.* 2634. 1 *Bott*, 141. 1 *Nol. P. L.* 167. An appeal against a rate for the relief of the poor of the parish of *Witney*, for that there were within the said parish many manufacturers and other traders, who

employed under them many servants and apprentices, and were not assessed in the said rate for their stocks in trade; the said rate was quashed on account of such omission, subject to the opinion of the court of K. B. on the following facts: It appeared there had long been many such manufacturers and traders within the said parish, who had been constantly assessed to the *land-tax* for their respective stocks in trade, but none of whom had ever been charged with the payment of any rate for the relief of the *poor* on account of such *stocks:* That as well the said manufacturers and traders as all other occupiers of lands and houses within the said parish, had been and constantly are assessed in this and all former rates for the relief of the poor, as well as to the *land-tax, for the lands and houses* in their respective occupations. The counsel who argued in support of the order of sessions cited and relied upon the case of Q. v. *Barking* (above). But the Court were not satisfied of the authority of that case. — Ld. *Mansfield* C.J. expressly called it a strange case. They observed, that the opinion of three of the judges was only said to be, that a farmer for his stock was not taxable, contrary to the opinion of *Holt* C. J. But it doth not appear that a question was directly put to them, whether a tradesman was taxable to the poor for his stock in trade? The court, however, gave no explicit opinion upon the merits of the present case, though they seemed very far from allowing that a tradesman is rateable to the poor for his stock in trade. But here, the order of sessions is clearly wrong upon the face of it; because they ought not to have quashed the whole rate, but to have added those persons and that property which it was thought were illegally omitted. And the order was quashed.

sessions consider to be rateable be not rated, they ought to amend the rate by inserting it, and not to quash the whole rate.

Rex v. *Ringwood, T.* 15 *Geo.*3. *Cowp.*326. 1 *Bott*, 148. 1 *Nol.P.L.* 167. On shewing cause against quashing an order of sessions which had quashed a rate for the relief of the poor of the parish of *Ringwood*, the sessions order stated, that three persons were possessed as coparceners of stock in the trade and business of common brewers and maltsters in the said parish, to the value of 4000*l.*; for no part of which the said coparceners, or any of them, were or was in the said rate assessed to the relief of the poor of the said parish. And it did not appear to this Court that stock in trade had ever before been rated in the said parish. Therefore the Court adjudged that the said recited rate ought to be quashed, and the same was quashed accordingly; and a new rate ordered to be made immediately, for the relief of the poor of the said parish, by the churchwardens and overseers of the poor of the said parish of *Ringwood*. On hearing the cause, the Court declined entering into the merits; but as to this particular case, Ld. *Mansfield* said, — I have no doubt what is to be done with it, as the authority of *Rex* v. *Witney* (p.62.) is precisely in point. I think the justices would not have done very wrong, if they had acquiesced in the practice which has obtained ever since the statute of 43 *Eliz.* of not rating this species of property. The case of *Rex* v. *Witney* was determined upon this single ground, that the justices in sessions should not have quashed the whole rate, but should have amended it by inserting the particular persons and that property which was omitted, and which they thought rateable. So here, the justices at sessions should have amended the rate, if they thought this property rateable; and then, on attempting to do it, they would

Same point, Whether stock in trade be rateable. *Quære?*

R. v. Ringwood.

have discovered the wisdom of conforming to the practice, which they expressly state in the case, of not rating it. If they had tried to have amended it, how would they have rated this stock? Are the hops, and the malt, and the boiler, to be rated at so much for each? Or is the trader to be rated for the gross sum which his whole stock would sell for? If the justices had considered, they would have found out the sense of not rating it at all; especially when it appears that mankind have, as it were, with one universal consent, refrained from rating it; the difficulties attending it are too great, and so the justices would have found them. And by the Court, the order of sessions was quashed.

If personal estate be rateable, it must be local visible property within the parish.

Rex v. *The Overseers of Andover*, *H.* 17 *Geo.* 3. *Cowp.* 550. 1 *Bott*, 153. 1 *Nol. P.L.* 189. *3d edit.* On a rule to shew cause why an order of sessions made for rating several tradesmen for their stock in trade towards the relief of the poor should not be quashed, the case was, the overseers made a new rate, in which they omitted to rate tradesmen for their stock, which had been formerly rated in that parish. Upon which the other inhabitants of the parish appeal to the sessions. And the sessions make order whereby they adjudge, "that Mr. *Joseph Wakefield* is a proprietor of stock in trade as draper in the parish of *Andover*, to the amount of 300*l.*, and that the profits of that trade are 15*l.* a-year; and that he ought to be rated towards the relief of the poor of the said parish in respect of such stock and profits 7*l.* each rate, in the rate so appealed against." And there was the like adjudication as to several other tradesmen. And the Court ordered the said rate to be amended, by putting into it a rate on the said several tradesmen, in respect of such their stock and profits.—It was objected, that this order on the face of it was bad, inasmuch as it did not appear, that the several persons whose names were added to the rate by order of sessions had notice of the appeal, or litigated the question at the sessions. They were therefore without redress; for it necessarily precluded them from their appeal. The sessions as to them made an original rate, without having given them an opportunity of defending themselves.—The court held this to be a fatal objection; and therefore that the order of sessions ought to be quashed.—Ld. *Mansfield* C. J. upon the general point, said, It is a very different question, whether personal estate is to be rated to the utmost extent, or not to be rated at all? It would make the poor laws very oppressive, if a man were to be taxed to the extent of his whole personal estate and income. In that case, every man who has money in the funds would be liable, lawyers for their fees, soldiers for their pay, and the like. But where men are occupiers of houses, and have stock in trade, whether such stock in trade may be taken into consideration, is a very different question. Some personal estate may be rateable. But it must be *local visible property* within the parish. It would be material to state what has been the custom of rating. If the usage should be to take in stock in trade, there would be very good right to support it. Let them, therefore, try it on the special circumstances of the case.—Mr. J. *Aston* said, that if upon the general question it should turn out to be the law that personal property is rateable, it must be then rated, though it was never rated before.—On the present question, the rule was made absolute, for quashing the order of sessions.

The sessions cannot add to a rate the names of those who have not notice of the appeal or do not litigate the question at the sessions.

Rex v. *Hill*, *T.* 17 *Geo.* 3. *Cowp.* 613. 1 *Bott*, 155. On shewing cause against a rule for quashing an order of sessions confirming a poor rate, it appeared that the appellant *Hill* was a clothier and an inhabitant of the parish of *Bradford*. That the churchwardens and overseers charged him to the poor rate in respect of his stock in the clothing trade which he had in the said parish. Against which rate he appealed, alleging that he was not liable. The sessions upon the appeal adjudge him liable and confirm the rate. Ld. *Mansfield* C. J. stopped the counsel in the argument for the defendant, by asking, What usage heretofore had been in this place with respect to rating stock in trade? Unto which it was answered, that the usage was waved, and that the counsel at the sessions had agreed to bring the general question before the Court. — Ld. *Mansfield* said, they had no right to do so, and thought it ought to be sent back to the sessions to state the usage. Afterwards, the case being sent back, and the sessions returning, that it had been the usage heretofore in the parish of *Bradford* to rate persons for their stock in trade, the Court ordered the rate to stand.

Stock in trade may be rated.

Rex v. *Rodd*, *H.* 22 *Geo.* 3. *Cald.* 147. 1 *Bott*, 161. 1 *Nol. P. L.* 166. Upon the appeal of *James Rodd* against a rate made for the relief of the poor of the borough or parish of *Bridgwater*, wherein he was charged four shillings in respect of his *stock in trade*, above what he was therein charged for his house and shops, and other real property. — The sessions confirmed the rate, and stated specially — That within the said borough it had been usual ever since the existence of rates for the relief of the poor, to assess the inhabitants of the said borough, *for and in respect of their personal property, or stock in trade;* and amongst them such as have been of the same trade, and of similar circumstances with the appellant. The question, therefore, submitted to the Court was, Whether the said *Rodd* were rateable for his *stock in trade?* It was admitted that it was not possible to distinguish this from the above case of *Rex* v. *Hill*. — By the Court: Rate affirmed.

Rex v. *Dursley*, *M.* 35 *Geo.* 3. 6 *T. R.* 53. 1 *Bott*, 210, 290. *Nol. P. L.* 200, 201. 221, 222. *J. Harris* appealed to the *Gloucester* sessions against a poor rate for the parish of *Dursley*, upon the following ground amongst others, That Messrs. *Tippotts* and Co. and several others, were not rated for their goods, stock in trade, and personal effects; and the Court, being of opinion that stock in trade and personal property ought to have been rated, quashed the rate. — The above case of *Rex* v. *Hill*, and the case of *Rex* v. *Maddern* (*post*), were cited to shew that stock in trade is rateable — By Ld. *Kenyon* C. J. There is no doubt but that personal property is rateable; but the difficulty in this case is to know for what these persons should have been rated. They appeared indeed in the possession of stock in trade, some to the amount of 100*l.*, others 50*l.*, but the sessions have not stated whether or not this property belonged to the several persons whom the appellant wished to include in the rate, or if it did, whether or not it produced profit, or was not liable to incumbrances equal to the value of the property itself. *The bare possession of personal property is, to be sure, evidence from which the justices may draw the conclusion that the possessor should be rated;* but here

Personal property is rateable, and the bare possession of it is evidence from which the justices may draw the conclusion, that the possessor is rateable.

the justices, after stating the possession, have raised a doubt respecting other facts, which they should have enquired into and determined upon. They have raised a mist which we cannot dispel. The facts are not sufficiently disclosed to enable us to draw the conclusion that these persons ought to be rated. Order of sessions quashed.

In *Rex* v. *Sherborne*, *T.* 47 *Geo.*3. 8 *East*, 537. *Bott*, *Cont.* 67. 1 *Nol. P. L.* 200. Two persons appealed against a poor rate, wherein they were rated for *stock*, meaning stock in trade. It appeared that the appellants were silk throwsters, occupying certain buildings in *Sherborne*, in which persons were employed by them to clean, spin, and throw silk sent them in a raw state from *London* for that purpose. The silk, after being so improved, was sent back, and they were paid for the process. The rate was imposed in respect of the profits derived from this silk as *stock*. But the Court decided at once that it was impossible it could be considered to be stock as a subject of rating.

If the sessions are of opinion that certain persons who are left out of the rate ought to be inserted, they must quash the rate.
The court will not alter the conclusion drawn by the sessions from the evidence stated.

Rex v. *Darlington*, *M.* 36 *Geo.* 3. 6 *T. R.* 468. 1 *Bott*, 215. 1 *Nol. P. L.* 200. 221. *G. Allan and others*, appealed, because seven persons were not rated for their stock in trade. The sessions quashed the rate, and stated as follows: That it did not appear whether stock in trade had or had not been rated in *D.* prior to 1745; from 1746 to 1752 it had; and again from 1788 to 1794 it had been rated; in *August* 1794, a rate was made which continued in force the remainder of the year, which was not appealed against, in which the above seven persons were rated for their stock in trade as yielding certain profits (stating them), and which the appellants contended was an admission that, to that time, those seven persons possessed stock in trade producing the profits there stated: This rate was paid by some of the traders, but not by others; to enforce payment from whom no step had been taken. The appellants then proved that those seven persons, when the rate was made in *January* 1795, kept shops in *Darlington*, and that each possessed a visible stock in trade there, and appeared to carry on business to the same extent as in 1794. The circumstances of the ability of those seven persons, or that they respectively made profit of their stock in trade, or that it was exclusive of their debts, or that it was a clear residue after debts paid, did not appear otherwise than as above stated. — Ld. *Kenyon* C. J. The case of *Rex* v. *Dursley* (*ante*) has been particularly pressed upon us as a decision of our own; but the present case is clearly distinguishable from that. There the sessions had forborne to draw any conclusion from the facts proved before them, and left a mass of evidence for our consideration, but so incomplete, that we could not say, upon the facts stated, whether the parties ought or ought not to have been rated; whereas here the justices have drawn the conclusion. It was competent to them to decide on the weight of the evidence; they have decided, and we cannot now say that the conclusion they drew was certainly wrong. With regard to the other question, this was a case in which the sessions could not alter the rate, because, by the addition of these seven persons, the proportion of every other person would have been altered; therefore, they were bound to quash the rate. — The other judges concurred. Order of sessions confirmed.

Rex v. *Ambleside*, 16 *East*, 380. *R. S.* appealed against a poor rate for *Ambleside*. The ground of appeal was, "Because one *W. W.*, and other persons named in the rate, were not then assessed or rated for or in respect of his and their stock in trade." The rate in question was made in respect of *real* property only, and no stock in trade or other personal property was included in the rate. *W. W.* had stock in trade which was visible personal property within the said township, producing profit, and no assessment was made upon him in the said rate in respect thereof; but no stock in trade or other personal property had ever been rated within the township. The sessions quashed the rate, subject, &c. Upon this case being called on, after *P. Courtenay* had stated that the question intended to be submitted, was, whether if stock in trade produce a profit, the usage can vary its rateability? — Ld. *Ellenborough* C. J. said, Is there not another question; whether the rate ought not to have been amended, instead of being quashed? As to the rateability of stock in trade, that has been settled in *Rex* v. *Darlington*, 6 *T. R.* 468., if it be ascertained to be profitable. It is then an objection applicable to one person, and the justices should have amended the rate, and not quashed it. The 41 *Geo.* 3. U.K. *c.* 23. (*ante*) was passed for the very purpose of enabling them so to do, in order to prevent the inconvenience of the parish being without funds for the maintenance of its poor in the mean time. We say, therefore, that this rate was not properly qaushed, but ought to have been amended. If there are any circumstances to take it out of the general rule, as stated in *Rex* v. *Darlington*, they should be stated: if there are none such, the property is rateable. *Rex* v. *White*, 4 *T. R.* 774., is also to the same effect. — Order of sessions quashed.

On an appeal against a rate, on the ground that *A.* is not rated for his stock in trade, the sessions ought to amend the rate and not quash it.

Stock in trade is rateable to the poor, notwithstanding it has never been rated, unless there be some circumstances to take it out of the general rule.

(c) Household Furniture, Money, and Funded Property.

In *Rex* v. *White*, *T.* 32 *Geo.* 3. 4 *T. R.* 771. 1 *Bott*, 89. 202. 1 *Nol. P. L.* 216. 218, 219. It was ruled that household furniture was not rateable to the poor.

Household furniture.

And also that money, out at interest or not, is not rateable.

Money at interest.

In *Rex* v. *the Churchwardens and Overseers of St. John's Maddermarket in Norwich*, *H.* 45 *Geo.* 3. 6 *East*, 182. 1 *Bott*, 239. 1 *Nol. P. L.* 160. 216. *A. S.* appealed to the sessions against an assessment of 100*l.* stock charged upon her for the relief of the poor, which appeal was allowed. Upon a case stated, it appeared that the rate was made by virtue of a local statute (10 *An.* *c.* 6.), which enabled the overseers, &c. of that parish, "to assess a certain sum upon the inhabitants, &c. and on all persons having and using stocks and personal estates in the said parish, *or having money out at interest.*" That "*money out at interest, as well without as within the said city and county of* Norwich," had been constantly assessed to the poor's rates. That the appellant was possessed of *money vested in the public funds, or on government security, and then standing in her name in the books of the governor and company of the bank of* England *in the* 5 per cent. *bank annuities.* And the question submitted was, as to the rateability of this stock. — *Per* Ld. *Ellenborough* C.J. *Money* out at interest, however the lender may stipulate not to call for the principal for a given

Vested in the public funds.

period, is still a *loan* of money, with forbearance for a certain time. It implies that the principal is to be repaid at some time or other, when the lender will be entitled to receive it as *money*, and not a substitute for the principal in a mere annuity. But with respect to stock, the payment of the principal can never be compelled. All that the government engage for is a perpetual annuity redeemable at their own will and pleasure. If this then be not rateable under the local act, neither is it so under the 43 *Eliz. c.* 2. (the only other statute by which it could be rateable) not being local visible property within the parish. It is therefore not rateable under either statute. The other Judges agreed.

(*d*) The next Division is of those Cases in which Profits are earned by personal Labour, and are themselves merely personal.

Salaries are not rateable.

Rex v. *Shalfleet*: *Sherrington's case, H.* 7 *Geo.* 3. 4 *Burr.* 2011. 1 *Bott*, 138. 1 *Nol. P. L.* 165. It appeared, that the appellant inhabited a tenement at *S.* for the purpose of superintending the saltworks there, for which he received a salary of 40*l. per ann.* from the government; and that he was rated for this salary. And Ld. *Mansfield* C. J. said, "We are all of opinion that this is *not such* a species of property as can be rated to the relief of the poor, as personal estate within the parish."

In *Rex* v. *White and others, T.* 32 *Geo.* 3. 4 *T. R.* 771. 1 *Bott*, 202. it was also held that a collector of the customs for his salary, or a captain in the navy, a merchant's clerk, or the master of a merchant vessel, for their pay, are not rateable to the poor.

So the profits of an attorney.

In *Rex* v. *J. Startifant, M.* 37 *Geo.* 3. 7 *T. R.* 60. 1 *Bott*, 217. 1 *Nol. P. L.* 165. the defendant appealed against a poor rate in which he was assessed in respect of his profits and fees of his profession as an attorney. And the Court, without hearing any argument, said that such a rate could not be supported.

(*e*) Tithes.

The vicar is chargeable in respect of his tithes.

Rex v. *Turner, H.* 4 *Geo.* 1. 1 *Str.* 77. 1 *Bott*, 126. 1 *Nol. P. L.* 145. 175. The defendant being assessed towards the poor rate for his tithes as vicar, appealed to the sessions, where he was absolutely discharged.—But by the Court: As vicar he is chargeable by the 43 *Eliz.*, and the sessions hath only power to moderate, but not discharge. And the order of sessions was quashed.

Parson who lets his tithes should be rated.

And a parson who lets to each parishioner his own tithes, is properly the occupier, and ought to be rated. 16 *Vin. Abr.* 427.

The farmer of tithes, who lets the tithes again, is *primâ facie* liable to the poor rate.

Rex v. *Lambeth, T.* 8 *Geo.* 1. 1 *Str.* 525. 1 *Bott*, 127. 1 *Nol. P. L.* 175. *S. C.* 8 *Mod.* 61. The parson lets his tithes to farm; the farmer agrees with the tenant of the land that, in consideration of his paying so much, he shall retain the tithe and gather in the whole crop without dividing: Which of the two is chargeable to the poor rate, as occupier of the tithes, was the question. The sessions discharge the lessee of the parson, and tax the tenant of the land.—But by the Court: The order must be quashed. The farmer of the tithes is *primâ facie* liable to the poor rates; and

therefore unless he can throw that charge over upon another, the tax must be made upon him. The tenant of the land in this case can never be said to be the occupier of the tithes; for he is either a person who buys the tithes, or else he is to be taken as only excused from paying any; and nobody can say, but that though the parson thinks fit to excuse a parishioner, he will still remain in point of law the occupier of the tithes. This agreement being only by parol, cannot enure as an under-lease of a thing that lies only in grant. Suppose it was the case of underwoods which are sold standing, and the vendee grubs them up; can it be imagined that makes him the occupier? Or suppose the tenant sells the whole crop standing, will that make him less the occupier of the land? If it should, it would be impossible for the officers of the parish to know whom to charge. We must take this tenant of the land to be like any other buyer of the tithes, since he has no more title to them than any stranger whatsoever; and when the parson or his farmer receives a sum of money in lieu of tithe, that is in law a receipt of the tithe: with this only difference, that it is not tithe in kind. In the case of a composition (as this is) or a *modus*, it was never thought but that the parson was chargeable as occupier of the tithe; therefore there being no colour to charge the tenant of the land, the order of sessions must be quashed.

Rex v. *T. Carlyon, clerk, and another, T.* 29 *Geo.* 3. 3 *T. R.* 385. 1 *Bott*, 186. 1 *Nol. P. L.* 145. 167. 211. Upon an appeal to the quarter sessions in *Cornwall* against a poor rate, the same was confirmed, subject to the opinion of the court on a case stating, that the appellants were the proprietors of the tithe-sheaf of the parish of *Paul*, and also of one-tenth of all fish caught, and brought on shore within the parish, for which they and their tenants were rated. The only question made was concerning the rateability of fish, which being a property *yielding a certain annual profit*, the sessions confirmed the rate.—Ld. *Kenyon* C. J. This question is decided by the express terms of stat. 43 *Eliz. c.* 2. § 1. which, after mentioning parsons and vicars in the number of the persons who are to contribute to the relief of the poor, enumerates (among other things) *tithes impropriate and propriations of tithes*, in respect of which the rate is to be made, and indeed the spirit of the law coincides with the words of this statute; for the legislature intended that when rates were made, every person should contribute according to the benefit which he received within the parish. Here the parties receive a certain benefit arising from the tithe of fish in this parish, and run no risk whatever. Then it is said, that only property which is *visible* should be rated; but I think it is carrying the rule of exemption too far; for oblations and other offerings which constitute the rectorial or vicarial dues are rateable.—Order of sessions confirmed.

If one be entitled to the tithe of all fish caught in the parish, he is rateable in respect thereof.

Oblations and other offerings are rateable.

(*f*) Manorial Profits.

The overseer of *Stoke Nayland* in *Suffolk* made a rate, in which he charged the quit-rents of several manors within the parish; which rate the justices refused to sign, because the quit-rents ought not to be taxed. Whereupon the overseer, on application to the King's Bench, obtained a rule to enforce the justices to

***Quære*, Whether quit rents and casual profits of manors?**

sign it, which was strongly opposed: but the Court ordered the rate to be signed, and a warrant to distrain; so that if any person thought himself aggrieved he might bring an action upon the distress, and the matter in law be brought in question. *Carth.* 14. *M.* 3 *J.* 2.

In another like case, *Eyre* J. said, that a quit-rent is not taxable to the poor, for the tax ought to be laid on the occupier. But *Holt* C.J. said, It was otherwise ruled in the case of one *Williams* of *Suffolk*. *Comb.* 264. *T.* 6 *W.*

The rents and casual profits of a manor are not rateable to the poor.

Finally, in *Rex* v. *Vandewall, E.* 33 *Geo.* 2. 2 *Burr.* 991. 1 *Bott,* 131. 1 *Nol. P.L.* 88, 89. 204. this point came to be fully considered. *S. V.* esq. lord of the manor of *A.* was charged to the poor rate for the manor itself (exclusive of the demesne lands,) consisting of quit-rents, fines for renewal of copyholds, and other casual fruits and profits: he occupying nothing else in the parish. The justices confirmed the rate. The order being removed by *certiorari*, it was objected that the lord was not an inhabitant, nor were the rents and profits of the manor rateable under the statute.—By Ld. *Mansfield* C.J. The rents and casual profits of the manor are not rateable to the poor; which he said was so clear there was no need to enter into any reasonings about it; and so far as appeared to the Court such a rate had never been attempted before.

Note. In *Rex* v. *Alberbury* (*post.*) Ld. *Kenyon* C. J. said that the principle the case of quit-rents went upon was, the objection of double rating the same property in the hands of the landlord as well as the tenant.

(*g*) Mines.

Iron 1

In *Rex* v. *Cunningham and others, M.* 45 *Geo.* 3. 5 *East,* 478. 1 *Bott,* 235. 1 *Nol. P.L.* 147. A rate upon "iron and coal mines" was quashed, because iron mines are not rateable to the poor, and therefore ought not to have been rated jointly with coal mines.

Lead mines not rateable.

In the case of the *Governor and Company for smelling down lead* against *Richardson and others, M.* 3 *Geo.* 3. 3 *Burr.* 1341. 1 *Blac. Rep.* 389. 1 *Bott,* 137. 1 *Nol. P.L.* 148. a point was reserved before Mr. J. *Bathurst* at *Carlisle* assizes 1761, which was thus: The defendant had distrained for the poor rate assessed on the occupiers of the *lead* mines lying in the parish of *Alston*: upon which they brought this action. The case stated, that the plaintiffs were lessees from *Greenwich* hospital; that they worked the mine, but did not live in the parish of *Alston*; that the profits of the hospital that year amounted to 1900*l.*, but those to the plaintiffs, the lessees, were quite precarious and uncertain, and that some years they gained nothing; that no lead mines had ever been assessed, except in an instance or two since making this distress.—By Ld. *Mansfield* C. J. The question is no more than this: Whether a lessee of lead mines, whereon no rent is reserved, other than a certain proportion of the ore to be raised, is rateable to the poor under the 43 *Eliz.*? Now nothing can be clearer, than that these mines are not within the *letter* of the statute; for the legislature could never intend by the word *coal* mines to comprehend other species of mines. If they had meant

to include them, they would either have enumerated them, or used the general word *mines*. So that the expression *coal mines* expressly excludes mines of any other sort, as much as if they had been excepted. And there was a very good ground of exempting them; as from the nature of working them they are liable to more hazard and expense than coal mines are. And at that time, all copper, lead, and tin mines, in *Derbyshire, Cornwall*, and *Mendip* in *Somersetshire*, (which are the only counties where works of that kind were then established,) were governed by particular laws; whereby any stranger, conforming to the ceremonies thereby required, was at liberty to work those mines, without any reward to the owner of the soil. And as all these undertakings were attended with infinite hazard and expense, and often ruined the projectors, it is no improbable conjecture, that the legislature meant, for this reason, and in order to encourage them to proceed in undertakings of this public utility, to exempt them from any other burthen or imposition than those that the miners' law had imposed. Indeed, *if a man has taken a lease of land, with privilege to dig for mines, he may be rated for the land:* But that is not the present case. And where the legislature have not imposed a tax, this Court cannot do it by construction. For example, the fees of a physician or lawyer are not made liable by the act, and, therefore, cannot be rated. Upon the whole, as here might be a very good reason for not making these mines liable, which is fortified by usage, and they are not within the letter of the act, I am clear they are not rateable. — Mr. J. *Denison* was of the same of opinion. — By Mr. J. *Wilmot:* There is a material difference between coals and other mineral works. Coals are easily found; but a vast deal of time and money is often spent in discovering other mines. The legislature therefore considered how dangerous it would be to discourage these kinds of adventurers, by subjecting them to a tax. Another thing which convinces me that the legislature meant only to include coal mines is, that in stat. 31 *Eliz. c.* 7. concerning cottages, they have used the words *coal mines and all other mineral works;* which plainly shews, they never understood that coal mines would comprehend other sorts of mines.

Lead mines.

Rowls v. *Gell*, *E.* 16 *Geo.* 3. 2 *Cowp.* 451. 1 *Bott*, 149. 1 *Nol. P. L.* 90. 98. 148. The plaintiff *Rowls* was lessee under the crown of all lead mines with their appurtenances, within the soke and wapentake of *Wirksworth*, with the *lot* and *cope* within the said soke and wapentake, and was assessed for the same, as for an estate of 500*l.* a-year. The duty of *lot* payable to the plaintiff, as lessee of the crown, is the thirteenth dish or measure of lead ore, got, dressed, and made merchantable, at all the lead mines within the said soke or wapentake; and *cope* is, sixpence for every load or nine dishes of lead ore raised at such mines. These duties are paid to and received by the plaintiff, without any risk or expense in working the mines, and in that year wherein they were assessed, amounted to the clear sum of 500*l.*: but they are uncertain, and vary every year. All persons have a right to dig for and get lead ore in the said soke and wapentake, conforming to the custom there: and the miners are entitled to a certain quantity of land above and on each side of such mine. — Ld. *Mansfield* C. J. delivered the resolution of the

The lessee of a lead mine under the crown with the lot and cope, is rateable in respect of the lot and cope.

Court: The poor rate is not a tax on the land, but a personal charge by reason of the annual profits which the lessee of the crown receives out of the land, and which is not charged at all before to the poor. In general, the farmer or occupier of land, and not the landlord, is liable to this tax. For it arises by reason of the land in the parish, and the landlord is never assessed for his rent, because that would be a double assessment, as his lessee had paid before. *Lead mines* are not within the statute of 43 *Eliz.* They are in themselves uncertain, and may prove unsuccessful to the adventurers. Taxes, therefore, upon the adventurers would be hard, and they are therefore excused. But he, who in case they do prove of value, receives a stipulated benefit from the profit or value of them, is not excusable on the same ground; and therefore is expressly charged to the land-tax, as that falls upon the landlord. He is alike liable to the poor rate for his visible real property in the parish; though, where the poor tax is a charge on the lessee, the landlord doth not pay in respect of his rent. Where the adventurer or lessee of the mine pays nothing, it is no double tax in any light; because the lord pays, not for that which the lessee or adventurer is excused from paying for, but the lord pays for his own. It is not a mere casual profit, but an annual revenue, if any; and very different from the casual profits of a manor, which are not annual; for there may be none for years. But if the mine produces profit to the miner, the lord's share is certain, annual, and an annual rent is paid for it constantly. The miner is obliged to pay certain proportions to the owner of the land. What reason then is there to exempt these proportionable revenues? It makes no difference to the adventurer; it doth not prejudice or benefit him. But as such obligatory payment is in respect to the land, the land-owner ought not to receive it clearer or neater than any other part of his estate, when he is at no trouble, expense, or possible risk. Therefore, we are all of opinion that the plaintiff is liable to be rated for this property.

Note. In the above case of *Rowls* v. *Gell*, the crown lessee was, as it were, the landlord to the miners; which observation will perhaps tend to shew the difference between it and the next succeeding case.

The lessee of a coal-mine rateable, although he derive no profit from the mine.

N. B. There was a prospective advantage to be obtained by the lessee, independently of present profits.

Rex v. *Parrott and others*, *E.* 34 *Geo.* 3. 5 *T. R.* 593. 1 *Bott*, 209. 1 *Nol. P. L.* 183. The appellants are lessees of some coal mines at *Exhall*, in *Warwickshire*, and appealed to the sessions against a poor rate, which was there confirmed, subject to the opinion of this Court on the following case: The *appellants* are *in possession* of the colliery for which they are rated *under a lease* from Messrs. *Arnold* and *Farmer*, by which they were bound to work the colliery, and to pay a sixth part of the money produced by the sale of the coals got there, without any deduction on account of the expense of working; it was proved that upon an average of the last three years the appellants paid 3001*l.* 15*s.* 7½*d.* as a sixth-part of the produce of the coals sold, and that they lost two farthings and half a farthing on every ton of coals sold: That the colliery always was and still is a losing adventure from the first of their taking it; and that they must have known it at the time they took it, and their inducement for taking it was, that when they had worked out the coal in this colliery, they

would be able to get at coal of their own which was adjoining; and that this was a cheaper way of getting at it than any other which they could have adopted. —— Ld *Kenyon* C. J. It is said, that this burden is to be laid where the benefit arises; but that rule cannot hold in a variety of instances that might be put. Suppose a landlord makes so hard a bargain with his tenant, that the latter derives no benefit from the farm, must not the tenant be rated to the poor? The landlord certainly is not liable. This case differs from that of *Rowls* v. *Gell* (*ante*, p. 71.) in this respect; that was the case of lead mines, which are not rateable under the statute of *Eliz.*, and there the question was, Whether or not the lessee were rateable for certain annual profits which he received without any risk on his part? Of the decision in that case it is not necessary for me to say any thing at present: I will form my opinion upon that question when it arises again. But here the property is rateable under the express words of 43 *Eliz.* c. 2. It appears in the case that there has been a clear profit of 1000*l.* a-year since the lease was granted; and the question is, Whether the appellants, who are occupiers of these mines, which it is admitted are rateable property, are or are not liable to be rated in respect of this property? Their objection is, that they have made an unprofitable bargain with the lessors; but we cannot examine into that; it being sufficient to make them liable, that they are the occupiers of rateable property. Order of sessions confirmed.

Coal mine ceasing to be productive, is not rateable.

Rex v. *Bedworth*, *E.* 47 *Geo.* 3. 8 *East*, 387. 1 *Nol. P. L.* 184. *J. W.* was assessed for a colliery, as of the annual value of 200*l.* at 5*l.*: he appealed against the rate. The sessions struck out of the rate the assessment, and stated in a special case, that the colliery was demised for a term of years to *W.* at 200*l.* annual rent, whether coal should be gotten or not: and that the coals were totally exhausted, and the mines ceased to be worked. In the argument, the case of *Rex* v. *Parrott* (*supra*) was referred to; in which, though the lessees of a coal mine worked it at a loss to themselves, after paying their rent, they were still liable to be rated. — *Per* Ld. *Ellenborough* C. J. In that case the subject-matter itself was profitable, and produced value to the owner, though the immediate occupiers derived no profit from it. But here the mine itself is exhausted, the subject-matter of profit is gone, although the rent, which was no doubt calculated upon the probable average produce of the whole term, be still payable. But, with respect to the parish, he is only rateable for the concurrent annual value during the period for which the rate is made; and when the thing which he occupies no longer affords any such concurrent value, the subject-matter of the rating is gone.

Toll tin and farm dues are rateable.

Rex v. *St. Agnes*, *M.* 30 *Geo.* 3. 3 *T. R.* 480. 1 *Bott*, 188. 1 *Nol. P. L.* 91, 92. Two occupiers of rateable property in the parish of *St. Agnes*, appealed against the poor rate, because *J. P. Andrews*, trustee of *J. Enys*, a minor, was omitted to be rated for the *fee farms of tin* arising out of his premises in *St. Agnes*. And also because *N. Donnithorne* was omitted to be rated for *toll tin* raised in the parish of *St. Agnes*, and to which they are entitled. The rate was quashed at the sessions, subject to the opinion of the court on the following case: — *J. P. Andrews*, as trustee of *J. Enys*, is entitled to a certain dish or measure arising out of

R. v. St. Agnes.

certain lands and tin bounds in *St. Agnes,* called *toll and farm tin;* which toll is one-15th part of all the tin gotten in the lands of *J. Enys,* within the parish of *St. Agnes;* and which said *farm tin or due* is one-12th part, after the said 15th part is deducted, *for toll of all such tin so gotten within the tin bounds* in the parish; and which said dues or duties are due and payable by the laws and customs of the *Stannaries* of *Cornwall,* free and clear of all risk and deductions whatsoever; but they are uncertain, and vary every year; yet for many years last past have produced a considerable sum annually. And *N. Donnithorne* is entitled to a certain dish or measure called *toll tin or dues,* arising out of certain lands in *St. Agnes,* and due and payable in the manner before stated, and which toll varies, and is uncertain, but also produces a considerable sum annually. —— *Morris* moved, that this case might be sent down to the sessions in order that *Andrews* and *Donnithorne* should be made parties to it. For though it was held in *Rex* v. *Maddern,* that a rate might be quashed on an objection similar to the present, without giving notice to the party whose name was omitted; yet in this instance the parties below had colluded together, and *had consented that the rate should be quashed,* subject to the opinion of this court whether *Andrews* and *Donnithorne* ought to be rated on the statement of a case on which they had not been heard. — But refused by the Court. — Ld. *Kenyon* C. J. said he approved of the cases of *Rowls* v. *Gell* and *Rex* v. *Maddern,* though these two persons would not be precluded from objecting to their being charged in any future rate on any ground they might think proper. But they were not parties to this case, and could not make any objection to the order of sessions. Order of sessions confirmed.

Landlords not resident within the parish, having leased lead mines and other minerals, with liberty to the tenants to dig, &c. reserving a certain annual rent, and also certain proportions of the ore which should be raised, are at any rate not assessable to the relief of the poor for such certain rent, on ore being raised; whatever the question might be as to the proportion of ore reserved when in fact any should be raised.

Rex v. *The Bp. of Rochester and others, trustees,* &c. *E.* 50 *Geo.* 3. 12 *East,* 353. 1 *Nol. P. L.* 94. The trustees appealed to the sessions against a poor's rate made for the parish of *Hunstonworth,* in the county of *Durham,* in which they, being lessors as after-mentioned, were rated in the sum of 50*l.*, being one moiety of the certain rent of 100*l.* reserved by the said lease. The sessions confirmed the rate, subject to the opinion of this court on a case, which set forth the lease under which the rent was reserved. This was an indenture of lease, dated the 30th of *May* 1805, and made between the *Bp. of Rochester* and the other trustees of the one part, and *A. Surtees* and others of the other part; whereby the trustees demised to the lessees "all the mines, veins, &c. parcels, and wastes of lead ore and other minerals and fossils, and also all the seams of coal then open or discovered, or which should or might, during the time therein mentioned, be opened or discovered, within, under, or upon the township lands called *Nuckton,* in the parish of *Hunstonworth,* and within certain other lands therein mentioned; together with full liberty and authority for the lessees to dig and search for pits, &c., under any of the said lands, for getting all the lead ore, minerals, and coals, in or upon the said mining grounds:" with other powers for the erection of machinery and other buildings on the mining grounds, and for facilitating the working of the mines as therein mentioned: "to hold the demised premises to the lessees for the term of 21 years, *yielding and paying therefore, yearly, during the said term, unto the said lessors,* their heirs, &c. for and in respect of the said *lead*

ore and other minerals, the clear yearly rent or sum of 100*l.*" payable half yearly. There were also reserved, by way of rent, certain proportions of such lead ore as should be gotten from and out of the said mining grounds. There was also a separate rent reserved for the coals, when wrought, and a rent for damages done to the ground tenants. The lessees were bound to pay all manner of taxes, rates, assessments, and impositions whatsoever, parliamentary or parochial, already or thereafter to be taxed on the demised premises, or on the lead ore, or other minerals, coals, or fossils, gotten thereout, or on the lessors or lessees in respect thereof. The case also stated, that no coal mines had been wrought within the grounds mentioned in the lease. That the lessees had other lead mines in the neighbourhood, but had gotten no ore from under the grounds of the lessors mentioned in the lease, and consequently no proportion of lead ore had been rendered or become due to the lessors. The lessors stood rated in 50*l.* being a moiety of the certain rent of 100*l.* reserved by the lease, and which was deemed a fair proportion for that part of the mining ground which is in the parish of *Hunstonworth*; and the lessors, if liable at all, did not object to the fairness of the apportionment. The rate was in the following form: "Lord *Crewe's* trustees for certain annual rent paid them by *Easterby, Hall,* and Co. *for the liberty of opening the mines within their lands, spoil of ground,* &c. 50*l.*—Rate 8*l.* 15*s.*" None of the lessors reside or have any dwelling house in the parish of *Hunstonworth.* The lessees were not rated to the relief of the poor in respect of the demised mines. After argument; — *Per* Ld. *Ellenborough* C. J. The trustees can only be rated as inhabitants or as occupiers within the parish. We have so recently (*a*) put a construction upon the word *inhabitant* in the statute of *Elizabeth,* as meaning a *residence* within the parish, that it is unnecessary to discuss the matter again; and the fact of such inhabitancy is negatived by the case. Neither are they *occupiers* of the property for which they are rated: so far from it, that they cannot maintain trespass for any injury done to the property which they are supposed to occupy: and even if they were the actual occupiers of coal mines, they would not be rateable for them before they were worked and productive. (*b*) But this is no more than a contract with tenants for the payment of a certain rent for ores supposed to lie under the surface; and if the tenants should open the ground and raise the ore, reserving a certain proportion of ore to the ground landlords; there is no occupation of any thing within the statute. If hereafter the tenants should open the ground and raise the ore, the trustees will then be entitled to certain proportions, and such profits may come within a different rule, as lot and cope: upon which no question at present arises. — *Grose* J. and *Bayley* J. agreed. — *Le Blanc* J. If the trustees were rateable at all, it must be as occupiers of the mines,

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(*a*) *Rex* v. *Nicholson,* 12 *East.* 330. and *Williams* v. *Jones,* 12 *East.* 346.

(*b*) Vide *Rex* v. *Bedworth,* 8 *East,* 387., where the lessee of a coal mine, which, having ceased to be productive, was no longer worked, was held not liable to be rated for it, although he was still bound by his covenant to pay the rent reserved to his landlord. *Vide ante,* p. 73.

or some proportion of them: but here they are rated as for a *rent eo nomine*, for which if they were rateable, every landlord might by the same rule be rated for his rent. Order quashed.

The lessees under the lord of the manor of lot and free share of all calamine raised within the manor are liable to be rated to the poor, as occupiers of land in the parish where the manor lies; none of them being resident in the parish.

Rex v. *Baptist Mill Company*, *T.* 53 *Geo.* 3. 1 *M.* & *S.* 612. *Bott*, *Cont.* 101. 1 *Nol. P.L.* 80, 81. 92, 93. The defendants were rated to the relief of the poor of the parish of *Rowberrow*, in the county of *Somerset*, for lot, toll, and free share of the calamine raised within the manor of *Rowberrow*. The rate was confirmed by the sessions; subject to the opinion of the court of K. B. on the question, whether the lot, toll, and free share of calamine was, or is rateable. The case stated, that the defendants were lessees of a lot, toll, or free share of all calamine or *lapis calaminaris* raised within the manor of *Rowberrow*, in the parish of *Rowberrow*, in the proportion of one part in four; that they *are not, nor were at the time of making the rate, in the occupation of any land or buildings whatsoever within the parish of* Rowberrow, *unless the Court shall be of opinion, as the sessions were, that the lot, toll, and free share above mentioned, are to be considered as land;* that all the lessees reside in *Bristol;* and that they run no risk nor incur any expense whatever, and have, since the commencement of the lease, received a quantity of calamine, as the lord's lot, toll, or free share, of a considerable value. After argument; — Ld. *Ellenborough* C. J. said, If these lessees of lot, toll, and free share are rateable at all, it appears to me they must be rateable as for property falling under the description of land. There appears to me to be a demise of a specific portion of the produce of land, or, in other words, land itself, free from risk or uncertainty; it is by the express terms of the finding stated to be an interest without risk. We might otherwise have been pressed with the question, whether the naming coal mines in the statute, was, according to the rule, *expressio unius exclusio alterius*, to all intents an exclusion of other mines; or was only put for example, as the naming a class in the statute of *circumspecte agatis* (2 Inst. 487.): for certainly the judges who have held it to amount to the exclusion of other mines, have generally coupled it with this reason, that other mines are subject to risk. Now here the portion of calamine is divested of risk; it is the clear profit, to which the lord is entitled, independent of any contingency; the whole is raised by the labour of the adventurer, and, when raised, the lord may be considered as working with the adventurers by the hands of the labourers; but, when raised, the lord's share redounds to him. That constitutes land, and may be fairly construed as such within the meaning of this statute. The case of *Rowls* v. *Gell*, (*ante*, p. 71.) and the other cases, do not admit of any distinction comprehending this case. This is not merely a demise of a personal chattel, of the ore after it is gotten, but of the ore which is to be gotten, and which is part of the solid mass of the land; therefore, under that description, it is assessable in the hands of the occupier. — *Le Blanc* J. I concur in opinion with my lord, that this property is rateable to the poor. In *Rowls* v. *Gell* and *Rex* v. *St. Agnes*, the rate was confined to the person in respect to the toll-dish of lead and tin raised; here the owner of the land is entitled to a certain portion of the ore when raised, which he lets, or allows persons to stand in his place as to that share; and we will not en-

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quire whether this were a legal demise, for he authorises them to receive, and they do receive it. They stand, therefore, in the situation of the lessee in *Rowls* v. *Gell*, and the person entitled in *Rex* v. *St. Agnes*. But subsequent cases have been cited, in which it is supposed that the authority of *Rowls* v. *Gell* and *Rex* v. *St. Agnes* has been disturbed; which supposition is only raised by laying hold of particular expressions of the Court to be found there. The cases of *Williams* v. *Jones* and *Rex* v. *Nicholson* are totally different; for those were the profits of a ferry, arising out of a right to convey passengers over a river; it was impossible in those cases to say that the persons were occupiers of any thing but the boat and tackle in which the passengers were conveyed, in the same manner as a stage-coachman is the owner of his coach; it was therefore impossible to make the doctrine of *Rowls* v. *Gell* bear on those cases. Viewing all the cases on the subject, and the principle upon which *Rowls* v. *Gell* was decided, and likewise the public convenience, as it regards this species of property, and not seeing that the original construction on the words, occupier of land, may not comprehend a person so far an occupier as to receive a portion of the land discharged of any risk, I cannot say that this company is not rateable. — *Bayley* J. I am of the same opinion. I cannot distinguish this from the case of granting a share in the land, which is not co-extensive with the entire interest. It is not doing any violence to this lease to consider the lessees under it as occupiers of land. I lay out of consideration all the cases in which it has been holden that adventurers are not liable. Order of sessions confirmed.

Where the owner of the soil, by indenture, granted to certain adventurers full and free liberty to dig, mine, and search for tin, tin ore, &c., and the same to take and convert to their own use, subject to a reservation therein contained, and to make such adits, shafts, &c. as they should think necessary: yielding and paying to him *one full eighth share of all such tin, tin ore, &c.*; the same having been first spalled, picked, or

Rex v. *The Inhab. of St Austell*, *E.* 3 *G.* 4. 5 *B.* & *A.* 693. 1 *Nol. P. L.* 98. 134. — *Thomas Carlyon*, Esq. appealed against the following assessment for the relief of the poor of the parish of *St. Austell*, in the county of *Cornwall*.

Rates on tin and copper dues, and water-courses.

T. C. esquire, for *Crinnis* Copper Dues.

	£.	s.	d.
Annual return, - -	4080	0	0
Amount taken at two-fifths, -	1632	0	0
Assessment at 3*s*. in the pound,	244	16	0

The sessions amended the rate by striking out this assessment, and stated the following case: Mr. *Carlyon*, at the time of making the rate, was not an inhabitant of *St. Austell*, nor the occupier of any land, house, or other property therein, unless he was deemed to be such occupier in respect of the said dues: as to which the facts were, that he being seised in fee of all the lands within which a certain mine was situate, by indenture made 12th *January* 1811, between him and one *Joshua Rowe*, in consideration of the payment therein reserved, and of the covenants, &c. therein contained, did give and grant unto the said *Joshua Rowe*, his partners, fellow-adventurers, &c. full and free liberty, licence, power and authority, to dig, work, mine and search for tin, tin ore, copper, copper ore, and all other metals and minerals whatsoever, in and throughout all that part of his lands commonly called *Crinnis*, situate, lying and being in the parish of *St. Austell*, thereinafter limited and described, and the same to take, carry

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otherwise made merchantable, and *fit to be smelted*. (See R. v. E. of Pomfret, p. 81.) And the indenture contained a power either for payment in ore, or the amount thereof in money, which had been acted upon; and the owner had received it in money: Held that for this, his one-eighth share, he was liable to be rated as an occupier of land, the reservation operating as an exception out of the demise, and not being of the nature of a rent.

away, convert and dispose of to their own use, at their pleasure, subject to the reservation therein contained: and within the limits of the set thereby granted, to make such adits, shafts, &c. and to erect such sheds, &c. as they should from time to time think necessary: *habendum* for the term of 21 years: yielding and paying, laying out and delivering upon the grass, unto and for the use of the said *Thomas Carlyon*, his heirs or assigns, one full eighth part or share, or dish, of all tin, tin ore, copper, copper ore, lead, lead ore, and other metals and minerals which should or might, by virtue of the said indenture, be found and gotten, raised and brought to grass within the limits of the set thereby granted, during the said term; the same having been first well and sufficiently spalled, picked, washed, stamped or cressed, or otherwise, according to the several natures thereof, made merchantable and fit to be smelted and fairly divided, and laid out upon the grass at their costs and charges. The indenture contained further covenants, that they would, during the term, pay or deliver unto the said *Thomas Carlyon*, his heirs or assigns, or his toller or agent for the time being, the full and just one-eighth part, share, or dish therein reserved; or pay the same in money, at the election of the said *Thomas Carlyon*, his heirs or assigns, at such best price as the same could from time to time be sold for, within two months at farthest, after such tin, copper, or other metals and minerals should be returned and sold as aforesaid; and would give six days' notice in writing to him, or his agent or toller, of the time of every weighing or division of the tin, tin ore, &c. to be raised and gotten by virtue of these presents: and also, that they would pay all, and all manner of rates, taxes, and assessments whatsoever, which should at any time thereafter, during the term thereby granted, be taxed, charged, assessed, or imposed upon the tin, &c.; and the money which should arise from the sale thereof, or the dues thereby reserved, or upon *Thomas Carlyon*, his heirs or assigns, for or in respect thereof, and indemnify him from the same; and would effectually work the premises in the most proper and effectual manner, with a sufficient number of labouring miners, unless prevented by water or other inevitable impediment. By virtue of this grant or set, the mine had been worked ever since the date thereof, by *Joshua Rowe*, and certain persons or adventurers claiming under him, at their own sole risk and expence, by their own labourers, and under the entire direction and superintendance of their own agents, and without expence, risk, or interference whatsoever, of or by, or on the part of *Thomas Carlyon*. Various shafts, levels, and other works necessary to search for and obtain ore had been dug and made, and counting houses and other houses built by the adventurers at a great expence, under and by virtue of the said grant or set within the limits thereof; and the mine, and all the erections thereon, and shafts, levels, and other workings within the same, had always, since the working of the said grant or set, been, and still are, in the sole occupation and possession of the adventurers. The mine is now a declining mine; but considerable quantities of copper ores had from time to time been raised from it: the whole of which, after undergoing several processes of breaking, washing, sifting and stamping, at an expence varying according to the quality of the ores, from 1*s*. to 6*s*. and 7*s*. in the

pound, and, as to the poorest ores, even to 15*s.* in the pound upon their market price, when cleansed for the purpose of separating them from earth and other substances, and thereby rendering them fit to be calcined and smelted, but by which process, the original and native quality of the ores themselves is not altered, had from time to time, before the same were calcined or smelted, been sold or disposed of by the adventurers, sometimes by public, and sometimes by private sale, as and when they thought fit, without any controul or interference by, or on the part of the said *Thomas Carlyon.* No part of the ores raised had ever been rendered to *Carlyon* in kind; but in lieu thereof, one-eighth part of the money, from time to time arising from the sales of the ores, had been hitherto paid to him in pursuance of the said indenture. He had been, from time to time, rated and assessed towards the relief of the poor, of the parish of *St. Austell,* in respect of such one-eighth part of the money so arising as aforesaid, and had paid the several assessments up to the making of the rate appealed against. —In support of the order of sessions, the following cases were cited. *The Lead Company* v. *Richardson,* 3 *Burr.* 1341.—*Rowls* v. *Gell,* 2 *Cowp.* 451.—*Rex* v. *The Baptist Mill Company,* 1 *M. & S.* 612.—*Rex* v. *St. Agnes,* 3 *T. R.* 480.—*Rex* v. *The Bishop of Rochester,* 12 *East,* 353.—*Rex* v. *The Earl of Pomfret,* 5 *M. & S.* 139., and *Doe dem. Hanley* v. *Wood,* 2 *B. & A.* 724. —*Abbott* C. J. I am of opinion that, in this case, Mr. *Carlyon* is liable to be rated for the dues in question. I am unable to distinguish this case from *Rowls* v. *Gell* and *Rex* v. *The Baptist Mill Company;* and I think, therefore, that we ought to decide conformably to those authorities. Notwithstanding all that has been urged upon this subject, I cannot distinguish between the cases where a party takes an interest under a specific contract, as in this case, and where the adventurers work under a custom previously existing throughout a district. The case is distinguishable from the case of *The King* v. *The Earl of Pomfret* in two respects; first, because there was an absolute demise in that case of all the mines, under which the possession, both of that part which was worked and that which was not worked, passed to the lessees; but here there is an express reservation of part. In the second place, the share reserved to the lord, in *The King* v. *Earl of Pomfret,* was of smelted lead; but here the reservation is of part of the native mineral. On these grounds, it seems to me that we ought to decide in favour of the rate; and I do that with the less reluctance, because it is still open to the party to institute an action against the person who may levy for the rate, and so to bring the question before a higher tribunal.—*Bayley* J. We ought to lay out of the question the circumstance of this being a failing mine. For it is a beneficial and useful property to the person on whom this rate has been made; and it was held in *Rex* v. *Parrott,* 5 *T. R.* 593. that a coal mine, whether profitable or not, is still rateable. This falls within the principles laid down in *Rowls* v. *Gell, Rex* v. *St. Agnes,* and *Rex* v. *The Baptist Mill Company,* and is distinguishable from *R.* v. *The Bishop of Rochester,* and *R.* v. *The Earl of Pomfret.* Here, the person rated is, in fact, an occupier of land, and derives a profit in respect of that occupation; and that, according to the doctrine laid down in the first set of cases to which I have referred, makes him rateable; and he has

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not dispossessed himself of the possession of the land, as was done in the two latter cases. In *Rowls* v. *Gell* it was first decided, that a party was rateable for lot and cope. It is said, indeed, that the party rated there was a lessee. That distinction makes no difference, for if the lot and cope had not been rateable in the hands of the original proprietor, it would not have been so in the hands of his lessee. The true ground of that decision was, that the party was there considered as an occupier of the land. *Rex* v. *St. Agnes* proceeded on the same ground; and in *Rex* v. *The Baptist Mill Company*, (at the time of which decision this court were peculiarly familiar with the words of the act of parliament,) it was determined, that the lessees under the lord of the manor of his lot and free share of calamine were liable to be rated as occupiers of land; and the decision went on the ground, that the lord of the manor would, but for the lease, have been rateable for it, also, for the court considered him as occcupying the land by the hands of the adventurers. The latter were to work the mine, and he was to receive part of the ore gotten, and the court considered him as joint occupier with them. In *Rex* v. *The Bishop of Rochester*, the mine was let; and, whether it was worked or not, still the bishop was completely out of possession of it, and the adventurers worked for their own exclusive profit. There, the rent reserved was a money-rent, and the relation between the parties to the contract was that of landlord and tenant, and all that the bishop of *Rochester* had was the reversion of the land. That, also was the main ground of the decision in *Rex* v. *The Earl of Pomfret*. But, in this case, the adventurers have not the sole and exclusive occupation of the mine; they have only the sole and exclusive privilege of working it. This is not a conveyance of any interest in the mine till it is actually worked. It is only a privilege to dig for ore, and then only on the terms of leaving a certain portion of that ore in a fit state for the landlord. It seems to me, therefore, that, according to the authorities to which I have referred, Mr. *Carlyon* must, in this case, be considered as the occupier of land; and, therefore, that he is liable to the present rate. — *Holroyd* J. In the view I have taken of this case, I entirely agree with the rest of the court. The case of *Rowls* v. *Gell*, although it was doubted by Ld. *Kenyon* in *Rex* v. *Parrott*, seems to me to have been well decided. It was confirmed by *Rex* v. *The Baptist Mill Company*, from which I cannot distinguish this case. The case of *Rex* v. *The Earl of Pomfret* is distinguishable on the grounds already stated. — *Best* J. If it were true that we must either overrule *Rex* v. *The Baptist Mill Company*, and the cases confirming that decision, or the case of *Rex* v. *The Earl of Pomfret*, I should be inclined to support the former. But it is not necessary, inasmuch as there is a material distinction between them. Here it seems to me to be clear, that Mr. *Carlyon* is an occupier of land. For the mine is not in the exclusive occupation of the adventurers, and whatever, by the indenture, is not granted out of Mr. *Carlyon*, remains in him. All that the adventurers take under it, is a licence to enter and dig and take away the minerals. But when they have so done, and the minerals are brought to grass, a division of the ore between them and the landlord takes place. This, then, is the same as if, instead of working for wages, they worked on condition of being paid by a certain share of the

produce. In this case, therefore, the rate must be supported. — Order of sessions quashed.

Rex v. *Welbank et al.*, *T.* 55 *Geo.* 3. 4 *M.* & *S.* 222. 1 *Nol. P. L.* 89. Upon appeal against a poor's rate for the township of *Arkengarthdale*, in the North Riding of *Yorkshire*, by defendants, as trustees under the will of *G. B.*, the sessions confirmed the rate, subject to a special case. The defendants were rated thus: The trustees under the will of *G. Browne* for 2000*l*, annual rent paid by the *Arkengarthdale* and *Derwent* Mine Company, for and in respect of two-thirds of the *Arkengarthdale* lead mines, and for other minerals and fossils, (except coal) within the parish of *Arkengarthdale*, and also in respect of their being owners, proprietors, and occupiers, of the moors, commons, and wastes within the manor of *Arkengarthdale*. Amount 2000*l*. Assessment 150*l*. (being 1*s*. 6*d*. in the pound.) In support of the rate, it was contended, that though the tolls *per se* were not rateable, yet if they be annexed to something corporeal, such as a sluice or bridge, &c. which is rateable, the occupiers of such bridge or sluice, &c. shall be rated in respect of the tolls. Now here the trustees are rated as occupiers of the moors, commons, and wastes under which the mines, in respect of the profits of which they are assessed, lie, so that they have a corporeal visible property within the parish, the value of which is enhanced by the annexation of these profits. And whenever that is the case, the principal thing shall be rated according to its value, as it is increased by the thing appendant to it, although the latter would not of itself be the subject of rate. — *Per* Ld. *Ellenborough* C. J. This rate appears to be ill on this single ground, that it is a conjoint rate in respect of two things, one of which is not rateable. The rent is clearly not the subject of rate, the other may or may not be. But it cannot be good as a conjoint rate. — *Le Blanc* J. If these trustees had been rated in a large sum in respect of their being the owners and occupiers of the moors, commons, and wastes, equal to the profits they derive from the mines, perhaps the Court might have said, we will not enter into the question of proportion; but here the rate is imposed in respect of two distinct properties, namely, the rent, and the surface of the land. — Order of sessions quashed.

Rent not the subject of a rate; and therefore a rate, by which trustees were rated in one gross sum for rent of certain mines under certain moors and wastes, and also in respect of their being owners and occupiers of such moors and wastes, was held ill.

Rex v. *Earl of Pomfret and others*, *E.* 56 *Geo.* 3. 5 *M.* & *S.* 139. 1 *Nol. P. L.* 130. Where a rate was imposed upon *P.*, owner of the lead ore in certain lead mines, in respect to the duty-lead reserved in a lease of said mines, being one-fifth share of the lead to be smelted from the ore raised from said mines. The court of K. B. held, that this reservation was in the nature of a rent, and therefore not rateable. Lord *Ellenborough* C. J. in delivering the opinion of the Court, said, We are of opinion that the present case is substantially different, from all the cases cited, (*Rowls* v. *Gell*, 1 *Cowp.* 451. *Rex* v. *St. Agnes*, 3 *T. R.* 480., and *Rex* v. *Baptist Mill Company*, 1 *M.* & *S.* 612.), and that a decision against the present rate will not break in upon the principle, or overturn the authority of any one of them. In the present case, the rights of the parties rated, who are the appellants, and those of the persons by whom the mines are worked, depend upon the terms of a written contract, a lease, by the terms whereof, the appellants have demised to others the whole of their mines and veins of lead and lead ore: and therefore they cannot be said to be the

Portion of lead ore (*when smelted*) reserved by lease to owner of the mine, held to be in the nature of rent, and not rateable. (See *R.* v. *St. Austell* p. 77.)

Rex v. Earl of Pomfret and others.

occupiers of any part, unless the render or reservation of one-fifth part of the lead to be smelted from the ore raised from the mines can operate as an exception of a portion of the mines, or of the ore raised from them. A reservation of a part of the thing demised cannot properly operate as a render, and it may be admitted that it operates as an exception. See *Co. Litt.* 47. *a.* 142. *a.* But this is not a reservation of any part of the thing demised, it is not a reservation of any part of the ore, or of the mineral, in its natural and primitive state; but of something of a quality, name, and character, entirely different; of a metal, produced from that mineral, by the laborious and expensive process of smelting, in which the native mineral is mixed with another matter, viz. with coal, or charcoal; and by the effect of fire upon both, a metal is obtained, which is to be considered, for this purpose at least, as entirely different from either of the two, and rather as a manufacture of art and labour, resulting from the use and application of these materials, than the original earth itself. This lease puts the parties unequivocally in the character of landlords and tenants. The reasons upon which the Court relied in *Rex* v. *The Baptist Mill Company*, do not apply to this case: but it is brought substantially within the principle of the case, *Rex* v. *The Bishop of Rochester*, 12 *East*, 353. For these reasons, we are of opinion, that the appellants were not liable to be rated for the lead rendered to them under the lease, and consequently that the order of sessions must be quashed, and the rate amended by striking out this part of it.

Lime works are rateable in the hands of the occupier.

Rex v. *Alberbury*, *T.* 41 *Geo.* 3. 1 *East*, 534. 1 *Bott*, 223. 1 *Nol. P. L.* 149. An appeal was made against a rate, and the rate was amended by the sessions by adding the names of certain persons as joint occupiers of certain lime works. The risk of working the limestone was stated to be great, and it was also stated that they paid a certain sum *per annum* as a royalty to the proprietors of the quarry. And the question for the Court was, The rateability of these persons for these lime works. And *per* Ld. *Kenyon* C. J. The only question is, Whether the persons named in the rate are rateable in respect of that species of property? The landlords, who derive a certain profit upon it in the nature of rent, could not have been rated, because that would be to rate the subject-matter twice. But what possible objection can there be to the rate upon the occupiers? There is no pretence to call this a mine. But the land itself is convertible into a source of profit; said indeed to be uncertain, but it is well known to be productive: and the very statement of the case shews it to be so. And as to the *quantum*, that must be settled by the sessions.

Slate

A slate-work is rateable, according to *Rex* v. *Woodland*, 2 *East*, 164. 1 *Bott*, 228. 1 *Nol. P. L.* 149.

Potter's clay pit.

And a potter's clay pit is also rateable according to *Rex* v. *Brown*, *T.* 47 *Geo.* 3. 8 *East*, 528. 1 *Nol. P. L.* 149.

(*h*)

When *saleable underwoods* are rateable.

Rex v. *Mirfield*, *T.* 48 *Geo.* 3. 10 *East*, 219. *Bott. Cont.* 68. 1 *Nol. P. L.* 152, 153. 230. The sessions quashed a rate upon appeal, and stated that the woods which were the subject of the rate were underwoods, which were usually cut down once in 21 years, and then, and not before, were profitable to the appel-

lant. That these underwoods were then standing to complete the 21 years' growth. And the question was, Whether these woods were *saleable underwoods* within Stat. 43 *Eliz. c.* 2., and liable to be rated every year, according to the annual average, or only *when cut down and sold?* — Ld. *Ellenborough* C. J. delivered the opinion of the Court, after consideration, that *saleable* means such as are intended for sale, in contradistinction to such as are to supply the land with estovers for fuel, and other purposes of the estate; and are, therefore, rateable at all times, according to their value, in exact proportion with the rest of the property in the parish. The objection to this is, that the property ought not to be rated until the produce of it has been severed from the land, and, until it has supplied the occupier with the means of paying. But it is not necessary that any of the profits should have been actually reaped or taken from the property during the period for which the rate is made; but the property is at all times rateable according to the improvement in its value, or in the rent which might fairly be expected from it. The property of these underwoods is at all times liable to be rated whenever rates are made. Rate confirmed. Rex v. Mirfield.

Rex v. *Inh. of Ferrybridge*, *H.* 3 & 4 *Geo.*4. 1 *B. & C.* 375. Upon an appeal of *R. R. Milnes*, Esq., against a rate or assessment made for the relief of the poor of the township of *Ferrybridge*, in the W. R. of *Yorkshire*, the sessions ordered the rate to be amended by striking out a portion of the rate assessed upon the appellant, amounting to £16. 16*s*. 10*d*, in respect of his woods and plantations, subject to the opinion of the court of K. B. on the following case. The appellant is the occupier of 650 acres of land in *Ferrybridge*. It appeared in evidence, that in the years 1785 and 1786, 340 acres of the said land were planted with oak and ash closely intermixed with *Scotch* firs and larches. At different periods, portions of the firs and larches were cut down for the purpose of thinning the plantations, and some of these thinnings were sold under the name of fir and larch poles, but the greater part were used in the erection of buildings. Considerable thinnings of the firs and larches have been made within the last four years, and produced a profit; many of them were of the height of from 30 to 40 feet, and contain from 10 to 12 cubic feet of wood, and were 30 years old. This wood is cut without reference to size, in order to allow room for the ashes and oaks to spread. The purpose of introducing firs and larches into those plantations, being to keep the same thick and sheltered, and to make a profit by cutting the firs and larches from time to time, when the oaks and ashes by reason of their growth require more space. Fifteen years ago, 18 other acres of the said land were planted in a like manner; and five years ago, 17 other acres of the said land were also planted in a like manner. The 18 acres have been thinned by cutting out a portion of the firs and larches, but no profit was derived by such thinning. The 17 acres have not yet been thinned. The roots or boles of the firs and larches which are cut, die in the ground and produce no shoots. The whole of the land so planted hath been always rated to the relief of the poor. — After argument, *per Bayley* J. The stat. 43 *Eliz.* does not throw the charge of maintaining the poor on the occupiers of every species of property, but only on the occupiers of property of

Firs and larch planted with oaks for the purpose of sheltering the latter, and cut from time to time, as the oaks grew larger and required more space, but when once cut, not growing again, and some of them yielding a profit by sale, are not *saleable underwoods* within stat. 43 *Eliz.*, the primary object of planting them being to protect the oaks, and not to derive a profit from them *per se* by sale.

Semble. That they are not underwood at all.

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certain particular descriptions there specified, and amongst others it speaks of the occupiers of saleable underwoods. The legislature does not use the word "Underwoods" *per se*, but "Saleable Underwoods:" and they have not in this or in any former statute affixed any definite meaning to the term "Underwood." If they had done so, we should feel ourselves bound to adopt that as the meaning of the word in construing the present act. It has been said that all wood comes within the description either of timber or underwood, and, therefore, that as firs and larches are not timber, they must be considered as underwood. It is not necessary to decide whether this be correct, because by the statute of *Eliz.* saleable underwoods only are subject to be rated to the relief of the poor. It may, however, be observed, that if all wood which is not timber, be underwood, it would follow, that horse-chesnuts, limes, plane-trees, and aspens would come within that description. Yet, surely, it would be a perversion of language to call such trees underwood. Generally speaking, that term is applied to a species of wood which grows expeditiously and sends up many shoots from one stool, the root remaining perfect from which the shoots are cut, and producing new shoots, and so yielding a succession of profits. It is probable that this is the description of coppice and underwood to which the statute of *Eliz.* applies. But it is not necessary to decide that, inasmuch as that statute also requires that it should be saleable underwood, and the word *saleable* in *Rex* v. *Inhabitants of Mirfield* has been held to denote such as is intended or destined for sale, in contradistinction to such as is to supply the land with estovers for fuel and other purposes of the estate. It does not, therefore, come within the description of saleable underwood, unless the prospect of deriving a profit by sale was the main object of the proprietor when the plantation was made. There are some species of wood, such as hazel, which are valuable only as underwood, and which must have been planted originally for the purpose of acquiring profit by sale. But of all plantations, fir is perhaps the least valuable, being chiefly, I believe, intended for protection rather than profit. It is found as a fact in this case, that these firs and larches were planted principally for the purpose of affording protection to the oak and ash. The latter were the most valuable. The firs, too, were cut only for the purpose of thinning the plantation. Some, indeed, were sold, but the greater part were used in the erection of buildings on the estate. Here, the trees, when cut, were 30 feet high, which to be sure does not accord with one's notions of underwood. Nor could they have been planted with a view to a profit by sale, for if so, the cuttings would have taken place with reference to their size; but here, the cuttings were made, in fact, merely for the purpose of thinning the plantations, and with reference to the main object, the encouragement of the growth of the more valuable trees. It is quite clear, therefore, that profit was not the sole or even principal object for which the firs and larches were originally planted; and if so, they are not saleable underwoods within the meaning of the 43 *Eliz.* It seems to me, that it would be most mischievous if property of this description was liable to be rated. It is an object of national policy to encourage the growth of timber. The grower of timber gives up a present profit with a view to future advantage, and it is fit that he should be encouraged to

do so. If this be rateable property, then, according to the *King* v. *The Inhab. of Mirfield*, 10 *East*, 219. it must be rateable annually to the relief of the poor, though it should not happen to be cut more than once in 20 years. The grower, therefore, will be subject to an annual charge long before he can derive any profit. That would operate as a great discouragement to the growth of timber; and I cannot, therefore, think that the legislature meant to subject property of this description to such an annual charge. The object of the statute was, to subject to the rate all such property only as yielded a succession of profits. I am, therefore, of opinion, that whether this be underwood or not, at all events it is not saleable underwood, and therefore not rateable to the relief of the poor. — *Holroyd* J. I am also of opinion that the firs and larches mentioned in this case are not saleable underwoods within the meaning of those words, as used in the 43 *Eliz.* The word "underwood" must be there taken to be used in its popular sense, unless it be shewn to have been used differently by the legislature in that or other statutes. After great research upon this subject, Mr. *Milnes* has not been able to shew that it has been so used by the legislature in any other sense. According to its popular meaning it signifies coppice, as distinguished from *hautbois*. I cannot agree that all wood which is not timber comes within the description of underwood. If that were so, beech, aspin, horse-chesnut, lime, and walnut trees, would be underwood in all places where they were not timber by the custom of the country. It certainly would be contrary to the popular meaning of that term, to call such trees underwood. Admitting, however, that these firs and larches were underwood, I am clearly of opinion, that they are not *saleable* underwoods within the meaning of the statute of *Eliz.* The general subject of rate in that statute is property yielding renewable profits; for even coal mines when worked may be said, in some sense, to yield a succession of profits. Underwoods cut at stated periods do yield a succession of profits from time to time, though not annually. This is clearly not wood of that description, for when it is once cut, the root is destroyed, and there is no succession of profit. In order to ascertain whether these be saleable underwoods, the object for which they were planted and the mode of management ought to be taken into consideration. It is stated in the case, that the purpose of introducing the firs and larches into the plantations was to keep the oaks and ashes thick and sheltered, and to make a profit by cutting the firs and larches from time to time, when the oaks and ashes, by reason of their growth, required more space. The principal object, therefore, of planting the firs, was to afford protection to the more valuable trees, and though a profit from the cuttings was contemplated, yet the cuttings were to take place only when the other trees required more space. And although, in fact, some of the thinnings did yield a profit, the chief object, both of planting and cutting the firs and larches, was not to derive a profit from them *per se*, but to encourage the growth of the timber. The latter, when at maturity, was looked to as the principal source of profit. It appears that, upon one occasion, even though eighteen acres were cut, no profit whatever was thereby produced; and that is a strong circumstance to shew, that the cuttings were not made

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with a view to sale, but to encourage and preserve the oaks and ashes. I am, therefore, clearly of opinion, that these firs and larches are not saleable underwoods within the meaning of the statute of *Eliz.* — *Best* J. It certainly would be very desirable, that every species of property should be rateable to the relief of the poor. The statute of *Eliz.* however, directs the rate to be raised by taxation of every occupier of lands, houses, tithes impropriate, propriations of tithes, coal mines, or saleable underwoods. The first four species of property mentioned in the statute yield an annual profit, and coal mines, when worked, usually produce something like an annual profit. In the reign of *Eliz.*, underwood was probably more generally used for fuel than at present; it yielded also a profit at certain intervals, though not annually. The legislature, too, have not merely used the term underwood, but have qualified it by the word *saleable*, thereby meaning that species of underwood which is generally produced for the purposes of sale, which is cut down at stated periods, produces new shoots, and thereby yields at certain intervals profits coming as nearly as possible to annual profits. It appears, in this case, that the cuttings did actually yield some profit, but they are not necessarily rateable on that account. The property ought to be of that description from which the owner is likely to derive a certain profit. Now, when this plantation was made, the owner could not reasonably expect to derive any profit from the mere cuttings of the firs and larches. The great object which he had in view was profit from the more valuable trees, of which the firs and larches were to be the shelter and protection. The latter were not to be considered objects of profit till that purpose was attained. It has been argued, that as these firs would be titheable, they are, therefore, subject to be rated to the poor; but that by no means follows; for by the stat. 45 *Edw.* 3. *c.* 3., gros bois of the age of 20 years, in respect of which the clergy had claimed tithe, under the name of sylva cædua, is expressly exempted from tithe. Now, gros bois means timber, and by the common law, includes oak, ash, and elm, and by the custom of the country, in particular places, many other species of trees. Every species of wood which is not timber by the common law or by custom, is titheable. By the statute of *Eliz.* no species of wood but saleable underwood is liable to be rated to the relief of the poor. It has been said that sylva cædua and underwood are synonymous. In *Ford* v. *Rackster* (4 *M. & S.* 137.), however, Lord *Ellenborough*, delivering the judgment of the Court, says, "Sylva cædua and subbois, or underwood, are not, it should seem, from stat. 45 *Edw.* 3., synonymous; for *subbois* is stated to be comprehended in it, not to be it itself, or to be the same thing with it. Sylva cædua seems to comprehend, *vi termini*, besides underwood, all such wood as is occasionally cut, either in body, branch, or root, with the statutable exception only of gros bois, properly so called, when it is of that age at which it is, by the stat. 45 *Edw.* 3., exempt from being tithed, i. e. of twenty years or upwards." Underwood, therefore, is one species of sylva cædua; and, possibly, the firs and larches may be sylva cædua, though not underwood. It is, however, unnecessary to decide in this case, whether these firs be underwood or not. It is sufficient to say, that they are not saleable underwoods,

and, therefore, that they are not rateable to the relief of the poor. —Order of sessions confirmed.

(*i*) Commons.

As to *Commons*, it has been decided that commoners are rateable under some circumstances in respect of their commons.

Commons.

Rex v. *Watson*, *M.* 45 *Geo.* 3. 5 *East*, 480. 1 *Bott.* 237. 1 *Nol. P. L.* 172. In this case *W.* appealed against a rate, because *E. H.* and others were not rated for certain common lands upon which they had commonable rights, which rights they enjoyed and used. The justices confirmed the rate. The case stated, that the mayor, &c. of *Huntingdon* were the owners in fee of these lands, which were used as a common of pasture, and stocked by such resident burgesses as thought proper to stock, under certain restrictions. That some of the resident burgesses stocked fully, that others did not, and some not at all. That in the latter case an annual payment was made by those who did stock to those who did not, and that *E. H.*, &c., were resident burgesses and did stock. — In the course of the argument it was observed by *Lawrence* J. that the word *occupation*, properly speaking, implies *possession*. — By Ld. *Ellenborough* C. J. This is not an incorporeal hereditament. The corporation are the owners in fee of the land, and they dole it out annually according to the custom, to certain of the burgesses, such of them as take it paying a certain sum to those who do not turn on any stock. Then when the number of those who stock is ascertained, what is there to distinguish them from other tenants in common? It has been decided that a common in gross is a tenement, and *it should seem from thence that it is rateable.* But I consider this not as an incorporeal hereditament, but as a corporeal tenement, of which the several burgesses who stock are tenants in common. And we cannot say that an enjoyment of land which is of such value as that those who do not actually enjoy it, but who might if they so pleased, are entitled to a compensation from those who do, is not something which is rateable; and being rateable; it must be rated in the hands of those who have the beneficial possession.

Members of a corporate body, which holds in fee certain common lands, exercising their right of common on such lands, are rateable.

Quære, Whether a common in gross be rateable.

Rex v. *the Trustees for the burgesses, &c. of Tewkesbury*, *M.* 51 *Geo.* 3. 13 *East*, 155. *Bott Cont.* 86. 1 *Nol. P. L.* 173. Upon appeal against the poor rates after mentioned, tried at the borough sessions of *Tewkesbury*, between the trustees appointed by an act of the 48 *Geo.* 3. for the burgesses or freemen and principal householders of the borough, appellants; and the churchwardens and overseers of the parish of *Tewkesbury*, respondents; the sessions were of opinion that the trustees themselves must be considered as the occupiers, and liable to such rates, and stated the following case. — The first of the rates appealed against was made on the 13th of *October* 1809 as follows:

Aftermath let out in pastures rateable.

Rent.	*Occupiers.*	*What assessed.*	*Rate.*
£330	Trustees of the *Severn Ham.*	Aftermath of the *Severn Ham.*	£16 10 0

The other was in the same form. Before stat. 48 *Geo.* 3., intituled, " *An act for inclosing lands in the borough and parishes of*

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Tewkesbury *in the county of* Gloucester, *and for vesting the after or lattermath of a meadow called* Severn Ham, *within the said borough and parish, in trustees for certain purposes,*" the burgesses or freemen of the borough of *Tewkesbury* resident within the borough for the time being, and the occupiers for the time being of certain houses situate within the borough were entitled to a right of common for a limited number of their own cattle only in the *Severn Ham* for a certain period in every year, which right of common was, according to the form and effect of the said act, afterwards suspended by order of the commissioners therein named, and the after or lattermath of the *Severn Ham* was by the act declared to be vested in certain trustees therein mentioned, and their successors, to be appointed by virtue thereof, by the name of "the trustees for the burgesses or freemen and principal householders of the borough of *Tewkesbury* in the county of *Gloucester,* appointed by an act passed in the 48 *Geo.* 3. for ever freed and discharged of and from all right, &c. whatsoever which any person or persons could or might have in or to the same, or any part or parcel thereof, upon certain trusts therein declared." And by the act it was further enacted, "that the said trustees, or any nine or more of them, at any of their meetings to be holden in pursuance of that act, might *let and set annually the after or lattermath of the said meadow* called *Severn Ham,* so vested in them as aforesaid, *or any part or parts thereof,* to any person or persons whomsoever, at the best and most improved yearly rent or rents that could be reasonably had or obtained for the same; and also might *let and set the after or lattermath of the said meadow* called *Severn Ham in pastures* for horses, cattle, and sheep, to different persons, in such manner as to rates and regulations as they should (subject to the restrictions in that act contained) from time to time appoint; or they might by writing under their hands and seals lease or demise for such term of years and in such manner as by the said act is described; and that the rents and profits arising from the after or lattermath of the said meadow called *Severn Ham* should, after the payment of all costs, charges, and expences incident to and attending the execution of the several powers to be by the said trustees exercised by virtue of that act, in the month of *April* in every year be paid and divided by the said trustees unto and between such burgesses or freemen of the borough of *Tewkesbury* aforesaid, and such occupiers of houses within the said borough as would respectively have been entitled to rights of common in, over, and upon the said meadow, if that act had not passed, according to their respective rights and interests." On the 12th of *August,* 1809, the trustees not being able to let the said aftermath together for a sum equal in their judgment to its value, *let it out in pastures at a certain sum per head for horses, cattle, and sheep, to various persons,* under the authority of the said act, for sums of money amounting together to 295*l.*, but subject to expences of between 30 and 40*l.* The several persons who took the aftermath in pastures, enjoyed the same by turning in their cattle from the 12th of *August,* 1809, to the 13th of *February,* 1810, and the trustees did not occupy it, unless such letting and enjoyment in pursuance thereof amount in law to an occupation by them. No alteration has been made since the passing of the act in the proportion of the poor rates of the

parish assessed on the occupiers of the said houses there, who were previously entitled to such right of common on the *Severn Ham*, nor has any deduction been made from the assessments in consequence of the alterations introduced by the act. The question was, Whether the trustees were liable to be rated in respect of the after or lattermath? If they were, the rates and order of sessions were to be confirmed; if not, the rates were to be amended accordingly. After argument, *per* Lord *Ellenborough* C. J. The corporation (*Rex* v. *Watson*, 5 *East*, 480.) could not take in the cattle of a stranger, but here the trustees may contract with any persons to take in their cattle by the year, or by the month, or week; and here not being able to let it altogether, they took in the cattle of different persons at so much a head. Who then can be said to be the occupiers, if they are not in this case? — The letting is at so much a head, without any definitive time, or for any definitive portion of the aftermath, nor were the trustees bound to limit the number of cattle, though they might have done so. — *Grose* J. agreed. — *Le Blanc* J. The persons whose cattle were taken in had no definitive portion of the aftermath let to them. — *Bayley* J. In the *Huntingdon* case the portions of those who had a right to stock were ascertained, but here there was nothing to limit the trustees from taking in others. — Order of sessions confirmed.

Where a corporation, consisting of a mayor, aldermen, and twenty-four capital burgesses, was seised in fee of certain pasture lands, and appointed a ranger to keep the keys of the gates, clean the ditches, preserve the fences, and impound cattle trespassing thereon; and, at a court held annually, made such regulations concerning their pastures, and the number of cattle each burgess was to turn on, and the sum to be paid in respect thereof, which money, after deducting the expences of management of the land, was distributed among the bur-

Rex v. *The Mayor, Aldermen, and Burgesses of Sudbury*. *H.* 3 & 4 *G.* 4. 1 *B. & C.* 389. 1 *Nol. P. L.* 173, 174. Upon an appeal by the mayor, aldermen, and capital burgesses of the borough of *Sudbury*, against the poor rate of *Ballingdon* in *Essex*, on the ground that they were rated for property which they did not occupy, the sessions confirmed the rate, subject to the opinion of the court of K. B., on the following case: — *Richard De Clare*, about the year 1250, granted certain pasture land, called *Portman's Croft*, in the hamlet of *Ballingdon*, to "his burgesses and whole commonalty of *Sudbury*;" and *Charles* the Second, by his charter, under which the corporation now exists, confirmed the said grant to the mayor, aldermen, and burgesses. This land is inclosed, and the corporation, consisting of a mayor, six aldermen, and twenty-four capital burgesses, appoint and have always, within the time of living memory, appointed, a person who is called the ranger of the commons, to keep the keys of the gates, clean the ditches, preserve the fences, impound cattle trespassing, and do other acts of a similar description. They have, during at all that time, at a Court called a Court of Orders and Decrees, annually made such regulations concerning their commons, as they thought proper, and given a public notice of them by the common crier; and for the year when the rate in question was imposed, the order declared, that every burgess who had a right to turn on his cattle to feed on the commons, should put two head of cattle, and no more, on *Portman's* croft. It then proceeded to appoint the day when the cattle should be turned on, and to fix the price for each head of cattle, which price is always paid by the freemen exercising this right (who amount to more than 100) to the treasurer of the corporation. The mayor, aldermen, and capital burgesses (being resident) enjoy the same right upon the same terms, and some of them exercised it during the year for which the rate was made. The cattle are

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gesses who did not turn on: Held, that the corporation were liable to be rated to the poor, as the beneficial occupiers of these pastures.

branded by the ranger when turned on. The whole of the money thus paid to the treasurer, after deducting the expences incident to the management of the land, is distributed among the poorer burgesses, who have, but do not, on account of their poverty, exercise, a right of depasturing cattle. The mayor, aldermen, and capital burgesses, were rated, in their corporate capacity, as the occupiers of *Portman's* croft; and the questions for the opinion of this Court were, whether there was any rateable occupation of *Portman's* croft; and if there were, whether the corporation, or the individuals who depastured their cattle upon it, were liable to be rated? — In support of the order of sessions, *Rex* v. *The Trustees for the Burgesses of Tewkesbury*, 13 *East*, 155. was cited — Contra, *Rex* v. *Watson*, 5 *East*, 480. — *Bayley* J. I am of opinion that the corporation were the beneficial occupiers of the land in question, and, consequently, that the order of sessions must be confirmed. We have been pressed strongly in the course of the argument, with the case of *Rex* v. *Watson*, 5 *East*, 480., but that case differs from the present in two important particulars. There the individuals who turned on had the exclusive enjoyment of the land, for the purpose of turning on their cattle. No payment was made by them to the corporation, but to those resident burgesses who had the right to stock and did not exercise it. Here it is clear, from the facts stated in the case, that the corporation retained the exclusive right to the possession of the land. They appointed a ranger, he was their servant, and paid out of their funds; his duty was to keep the keys of the gates, clean the ditches, repair the fences, and impound cattle: all these acts are usually done by the occupiers of land. The commoners could not insist upon having the keys from him. If the occupation, however, was in them, they would be entitled to have the controul of the gates, and they would be bound to do the several acts in respect of their occupation, which the corporation did by their servant. The corporation received the agistment-money paid in respect of the cattle turned on the land; they therefore occupied the land as agisters of cattle. The present case appears to me to fall within the principle of the decision in *Rex* v. *The Trustees for the Burgesses of Tewkesbury*, 13 *East*, 155. The only difference is, that there the common was fed by the cattle of strangers, and here, by the cattle of the members of the corporation. If, however, the exclusive occupation of the land is in the corporation, the principle upon which that case was decided is applicable to the present. There, an act of parliament had vested the aftermath of a certain meadow in trustees, in trust for the burgesses and principal householders of *Tewkesbury*, with power to let the same annually for the best rent, and also to let it in pastures for cattle, &c., to different persons, at such rates and subject to such regulations, as the trustees should appoint, or by writing under their hands and seals, to demise the same for a term of years; the rents and profits, after payment of all charges, to be divided by the trustees amongst the objects of the trust. The trustees having let out the aftermath in pastures, at so much per head, for horses, cattle, and sheep, were held to be the occupiers of the land, and, consequently, rateable for the same. The trustees were there considered as taking in cattle to agist, and particular stress was laid by the Court upon the circumstance,

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that there was no letting of any definite portion of the aftermath. Now, in this case, no definite portion of the land is let to any one individual. The corporation do nothing more than take in cattle to agist; they do not even know, in the first instance, how many cattle will come in. For these reasons, it seems to me that this case falls within the principle of the decision in *Rex* v. *The Trustees for the Burgesses of Tewkesbury*, and is distinguishable from *Rex* v. *Watson*. If it were necessary to overrule either case, I should adhere to the decision pronounced in the former case, which seems to me to furnish a more reasonable rule of construction than *Rex* v. *Watson*. — *Holroyd* J. This case differs from *Rex* v. *Watson* in several particulars. In that case it did not appear that the corporation did any acts upon the land. The temporary ownership seems to have been given up to the three persons mentioned in the case. Here the right of soil is in the corporation; they have the management of the land by the ranger, their servant, who keeps the keys of the gates, and cleans the ditches; at the court mentioned in the case, they annually make regulations with respect to the mode of enjoyment of the commons by the burgesses. The money paid in respect of the cattle turned on, is received by the corporation, though it be afterwards distributed among the poorer burgesses. Many of these acts done by them could only be done in respect of their being in possession of the land. That is perfectly consistent with the exercise of subordinate rights by the burgesses. In respect of any injury done to the land itself, trespass would lie by the corporation, but in respect of any injury done to the right of common, the burgesses could only maintain an action on the case. In *Rex* v. *Watson*, the part of the common situated in the parish of *St. Mary* seems to have been in the exclusive occupation of the three persons mentioned in the case. The objection to the rate was, that those persons were not rated for certain lands in the parish of *St. Mary*, over which they had commonable rights, which said land, in the notice of appeal, was stated to be in the respective occupation of the said three persons. The case stated that the mayor, aldermen, &c. of *Huntingdon* were the owners and proprietors of large tracts of land within the borough, used as a common of pasture, and stocked by the burgesses, part of which lands, viz. those mentioned in the notice of appeal, was in the parish of *St. Mary*. Now, that part in the parish of *St. Mary* was stated in the notice of appeal to be in the occupation of three persons named in the case. Those persons appear, therefore, to have had the exclusive occupation of those lands at the time when the rate was made. During that time the corporation could not do any act upon the land; they could not maintain trespass for any injury done to the land. Here the possession is in the corporation, although there be a subordinate right in others. There was no letting of any definite part of the common to the burgesses, there was no rent reserved, but merely something paid for the agisting of the cattle. For these reasons I am of opinion, that this case differs from that of *Rex* v. *Watson*, and that the order of sessions must be affirmed. — *Best* J. I think *Rex* v. *The Trustees for the Burgesses of Tewkesbury* furnishes a more just principle of construction than *Rex* v. *Watson*, and I should be disposed to overrule the latter case, if it were necessary to do so in the present instance. If *A.*

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occupies for the benefit of *B. C.* and *D.*, *A* is to be rated. Here, the corporation are the owners as well as the actual occupiers of the common, although they occupy for the benefit of individual corporators, viz. first, for the benefit of the burgesses who put in their cattle; and, secondly, for the benefit of the poorer sort, among whom the money received is afterwards to be distributed. The burgesses are nothing like tenants in common; they have no interest whatever in the soil; it is clear that the corporation retained possession by their officer; he could not otherwise impound cattle damage feasant, that being an injury done to the occupier of the land. The corporation are even to decide how many cattle each burgess is to turn on. This shews clearly, the right of occupation to be in the corporation, although the right of turning on be in different members. It seems to me that this is not distinguishable from the case of persons taking in cattle to agist. The corporation must be considered as the owners, for it is impossible to rate any other person; for before the orders of the Court are issued, the individuals who are likely to have any interest are unknown.— Order of sessions affirmed.

Way-leave (being a bare easement) not rateable.

In *Rex* v. *Jolliffe, M.* 28 *Geo.* 3. 2 *T. R.* 90. 1 *Bott,* 181. 1 *Nol. P. L.* 86. It was decided, that a person who had leased to him a right of way (*i. e.* a way-leave) over the land of another, paying for it so much *per* ton for the goods carried over it, was not rateable as an occupier, such way-leave being a bare right of passage, which is an easement and not a grant of the profits of the land, and an easement is not rateable; the land having been before rated in the hands of the occupier of that land.

Waggon-way, with exclusive occupation of the ground, held rateable.

In *Rex* v. *Bell and others, E.* 38 *Geo.* 3. 7 *T. R.* 598. 1 *Bott,* 218. 1 *Nol. P. L.* 81. 86. 128. 133. The dean and chapter of *Durham* granted certain leases of lands for twenty-one years, reserving to themselves the right of granting waggon-ways over the demised premises, paying damages for the spoil of ground. The appellants leased of the dean, &c. certain waggon-ways over these premises, making satisfaction to the original lessee for spoil of ground; they constructed these ways as most convenient to themselves, and prevented all persons, excepting such as were authorised by themselves, from using or going upon these ways. They paid 200*l.* rent for them, and were rated for them. The lands also through which these ways passed were rated after the construction of them the same as before; and the appellants were held by the Court to be rateable for these waggon-ways; and *Grose* J. said, it was clear that the appellants had the exclusive occupation of this ground. Rate confirmed.

Where a farmer lets his dairy of cows, he may be rated for the profits, as part of the profits of the farm, or they may be rated in the hands of the dairyman, provided the farmer be not rated for

Rex v. *Brown, T.* 47 *Geo.* 3. 8 *East,* 528. *Bott Cont.* 59. 1 *Nol. P. L.* 205. The question before the Court was the rateability of the following species of occupation.

The occupiers of several farms, who were rated to the poor for their respective farms, let their cows to an under-tenant called a dairy-man, at a certain rent *per* cow; which cows, by the agreement, were exclusively depastured on different grounds belonging to the occupier of the farm, at different times of the year; he being obliged to feed and maintain them without any expense to the dairy man; the dairy-man made a profit of the milk and produce of such cows, independently of the profit made by the

tenant of the farm. The appeal was, because these dairies were not rated, and the court of sessions thought such dairies not rateable. It was held by Ld. *Ellenborough* C. J. that presuming the farmer to have been rated to the full profits of the farm, it mattered not to the appellant whether the rate were distributed to the farmer and the dairy-man, or laid solely on the farmer. That certainly the dairy-man had an interest which would have given him a settlement, and he might have been rated separately from the farmer. That if a farmer bargained with another to let him have a field of grass to cut, or the aftermath of his meadows, such other might be rated whilst those subordinate interests existed. But if one general rate were made upon the whole, including these particular profits and interests, it would be no injury to the appellant. So also where the owner of a house and garden let the profits of his garden. The principal is, that what has once paid shall not be made to pay again. And this agrees with the case of Lord *Bute* v. *Grindall.* (1 *T. R.* 338.) And he said it would be a different case if a farmer derived profit from stock kept on his farm, but not connected with the management of it, as if he kept stock which he fed with oil cake for sale, there he would be rateable separately for that stock, not as stock of his farm, but as stock generally, from which he derived a distinct and separate profit. The present are properly the stock of the farm. The other judges agreed. Rate confirmed.

the profit he derives from letting them to hire.

(*k*) Extra Profits from Land.

There are, moreover, other cases in which lands, houses, and other tenements become of greater annual value, in consequence of particular circumstances attached to them, and it is determined that in such cases the assessment must be made upon the aggregate value, including the amount of these additional profits.

Rex v. *Miller*, *T.* 17 *Geo.* 3. 2 *Cowp.* 619. 1 *Bott*, 155. 1 *Nol. P. L.* 77. Certain lands with buildings thereon, and a certain well of mineral water thereout arising, called the *Cheltenham Spa*, were demised to *W. M.* at a yearly rent of 100*l.* The lands and buildings, independent of the well, were of the annual value of 20*l.* And he was rated to the poor as for an entire estate of 100*l.* a-year. — By Ld. *Mansfield* C. J. Nothing can be plainer than the present case. This is not a rate upon the profits of the well, but upon four acres of land let to the defendant at 100*l.* a-year; and the value arises, partly from the buildings, and partly from the spring that produces the mineral water. Therefore, the profits of the spring are part of the produce of the land. In *Worcestershire* and *Cheshire*, where there are salt springs, the rent of the land is increased considerably on that account. So here, the consideration of the well increases the rent. It is part of the produce of the land; and therefore, as such, ought to be rated.

The profits of a mineral spring are part of the produce of the land, and therefore the occupier is rateable for the whole a one estate.

Rex v. *The Governor and Company of the New River*, *E.* 53 *Geo.* 3. 1 *M. & S.* 503. *Bott. Cont.* 96. 1 *Nol. P. L.* 77. In a rate for the liberty of *Little Amwell*, in the county of *Hertford*, the governor and company of the *New River* were rated as follows:—

Land improved in value by a spring of water, liable to be rated at the aggregate annual value of the land and spring together.

	£.	s.	d.
Rental 300*l.*— Governor and company of the *New River*, for land in *Chadwell-Mead*,	15	0	0

Rex v. New River Company

The governor and company of the *New River* were incorporated by charter, dated *January* 21, 1619, for the purpose of conveying water from a certain spring, rising in *Chadwell-Mead*, in the liberty of *Little Amwell*, to the cities of *London* and *Westminster*; and do supply a great part of the same with water, by means of a cut called the *New River*, leading from the spring, to a head or reservoir at *Islington*, whence it is distributed by means of engines and pipes to the different parts of the metropolis, and from which the company receive considerable profit beyond the sum at which the property in question is rated. The water of the *New River* is derived from two sources, part from the river *Lea*, from which there is a cut communicating with the *New River*, near *Chadwell-Mead*, and part from a spring arising and inclosed in a basin in *Chadwell-Mead*, which is the subject of the present rate, and is the freehold of the *New River* company, and in their occupation. The quantity of water derived from each of these sources is nearly equal. That part of *Chadwell-Mead* which is occupied by the company, and is the subject of the rate, contains about two acres: it consists solely of the basin in which the spring rises, and so much of the cut from thence called the *New River*, as lies in the liberty of *Little Amwell*, where it joins the water taken from the river *Lea*, and from thence it continues to run with the said water so taken from the river *Lea*, in one joint course to *Islington*. The said land alone, without the spring, and if it were not covered with water, is of the annual value of 5*l*. The whole profits of the company arise from the sale of the water, no part of which is distributed, nor is any of the money received for it by the company, nor does any become due in the liberty of *Little Amwell*. If the advantage which the company derive from the use of the spring, may by law be included in the rate upon the land, the land and the spring of water together, are of the annual value at which they are rated. The sessions confirmed the rate. After argument, *per* Ld. *Ellenborough* C.J. This is a rate imposed on land, including a spring of water, as being of the aggregate annual value of 300*l*. The case finds, "that the land alone, without the spring, and if not covered with water, is of the annual value of 5*l*.; but if the advantage which the company derive from the use of the spring may by law be included in the rate upon the land, the land and spring together are of the annual value at which they are rated." Much of the argument against this rate seems to be built on a perversion of the terms of this finding. — I am at a loss to discover between this case and *Rex* v. *Miller* (*ante*, 93.) any other distinction than that which has been alluded to, viz. that the quality of the two waters is different, the one being a mineral and the other plain water. It has been assumed, indeed, that in that case all the profits were received in the parish where the land lay: but the case does not warrant any such conclusion; and we know perfectly well that the mineral water in question in that case is disposed of in great quantities at distant places. It may be said also that in this case the owners of the property are also the occupiers, but there the property was in the occupation of a tenant; to which the answer has already been given, viz. that the circumstances is no otherwise material than as it affords a more easy criterion for ascertaining the annual value. Here,

then, is land and water inclosed in a basin upon the land, which falls within the legal description of land; and although a considerable portion of the profits of such water is derived from pipes, through which it is distributed to other places, yet it is found that the water has a certain ascertained value at the fountain-head: and in cases of this kind it is enough to ascertain the local value of the property, without enquiring whether it yields a return on the spot. A degree of confusion has arisen from comparing this to the case of tolls upon canals: whereas they are essentially different; for tolls are an incorporeal hereditament, and have no local corporeal existence, so as to be the subject of rate until they become due. Then we have been pressed with the case of *Rex* v. *Sculcoates*, where it was holden that the commissioners in whom a drainage was vested were not rateable; but that was so holden upon the principle that where there is not a scintilla of benefit derived from the occupation, the property is not rateable: there the commissioners were merely servants of the public, having no divisible fund in their hands either as trustees or to their own benefit, and deriving no advantage from the drainage; and the only persons benefited by it were the owners of lands in other parishes. In *Rex* v. *Bath* it was assumed in the decision, that the water was the subject of rate in the parish where it was impounded in the reservoirs; the only question there being, whether the corporation were rateable in that parish to the extent of all the profits received by them, or whether the rate ought not to have been framed with reference to the contributory profits derived to the company in other parishes. Without going farther into the several cases upon this subject, and feeling no disposition to overrule the case of *Rex* v. *Miller*, I think there is no doubt that the sessions have come to a right decision. The property is locally valuable in the parish where it is rated, although that value is derived from extrinsic circumstances, and although the profits are actually received elsewhere. — *Grose* J. I cannot distinguish this case from the common case of land on which corn grows. In such case the land is assessed according to its value, and that value is estimated according to that which it produces: so here the land produces a spring, and the value of it is to be computed according to the benefit which the spring produces to the company. I say nothing as to the quantum of the rate, that being a question wholly in the discretion of the sessions: here we have only to decide on the rateability of the property. — *Le Blanc* J. The question is, whether in estimating the value of land, something which is peculiar to the land, and makes it more profitable to the occupier than if it were away, can be taken into consideration: and that question has already been determined in *Rex* v. *Miller*, which, as it seems to me, cannot be distinguished from the present case; does it make any difference to the occupier whether he takes the profits of his land by selling the produce on the land itself, or by disposing of it elsewhere? Suppose a man occupying land out of which he digs brick-earth, and converts it into bricks in an adjacent parish; would he not be liable to be rated as for brick land, in the parish where the land lies, in the same manner as if he had sold the bricks in that parish? — *Bayley* J. I thing it is clear, that the company are liable to be rated for the spring, which is part of the produce of the land. The

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Tolls upon canals.

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company have the means of carrying this produce to market, where it affords a beneficial return; and it can make no difference whether they convey it along a canal, or in carts and waggons, or by any other mode. It is still the produce of the land, which, when brought to market, produces a profit. But this is not a rate on the profits which the company acquire, but on the land which they occupy. The question then is, What land do the company occupy within the liberty, not what profits are received there; and what is its annual value? It appears that they occupy this land, the value of which is improved partly by the spring, and partly by reason of channels and pipes in other lands, through which the water is conveyed to the consumer. Perhaps, therefore, it may be fair that in fixing the quantum of rate on this property, respect should be had to the benefit which results to the company in the different parishes through which the water is conveyed. But this observation applies only to the quantum, with which we have nothing to do: here it is quite clear that the company have a beneficial occupation of land in *Little Amwell*, and are therefore liable to be rated.—Order of sessions confirmed.

Where an act of parliament empowered a company to lay under ground through the streets of a town main pipes for the conveyance of water, and the inhabitants with the company's consent to lay pipes communicating with such main pipes to their houses, paying to the company a rate for such privilege, Held, that the company were rateable to the poor in the parish where the main pipes lay, in respect of those pipes and the rates paid thereon.

Rex v. *Rochdale Waterwork Company*, *T.* 53 *Geo.* 3. 1 *M.* & *S.* 634. *Bott Cont.* 106. 1 *Nol. P. L.* 80. 210. The company of proprietors of *Rochdale* waterworks were rated to the relief of the poor of the township of *Spotland*, in the county of *Lancaster*, for and in respect of the trunks and pipes, and other apparatus for the conveyance of water, belonging to the company, situate and being fixed in the ground, in the township of *Spotland*, and the profits arising therefrom within the township. The sessions, upon appeal by the company, confirmed this rate, subject to the opinion of the court of K. B. on the following case: "By an act passed in the 49 *Geo.* 3. intituled, 'an act for the better supplying the inhabitants of the town of *Rochdale* and the neighbourhood with water,' the appellants are incorporated and empowered, among other things, to lay under ground, in, through, and along the public streets, and common highways, in the township of *Spotland*, main pipes for the conveyance of water therein; and the act authorises the inhabitants of the said township, with the consent of the company, to lay down leaden or other pipes, communicating with such main pipes, to their respective houses, paying to the company such rate or rates for such privilege, and water, as shall be mutually agreed upon between them. In pursuance of this act, divers such main pipes and branches are laid and used in the township, and divers of the inhabitants thereof pay such rates as aforesaid to the said company. The overseers of the poor of the said township have made the said assessment for the relief of the poor, pursuant to the statute 43 *Eliz. c.*2. and have assessed the company for the said pipes and rates. The appellants allege that they are not 'occupiers of lands' in the township within the intent and meaning of the statute." After argument, Ld. *Ellenborough* C. J. said, whether the occupiers of the houses are or are not rateable in respect of the advantages derived to them from the use of these collateral pipes, does not affect the present question. The question here is, Whether the company, as occupiers of the main pipes are rateable? What difference does it make whether it be a reservoir of so many feet square, or a pipe of so many inches in diameter? I own I cannot distinguish this case from *Rex* v.

The Corporation of Bath. Le Blanc J. If this rate on the company had been simply on the leaders which carry the water to each house, the argument might have been of weight; but the rate is imposed in respect of the main pipes and the profits arising from them.—Order of sessions confirmed.

Rex v. *The Birmingham Gas-light and Coke Company, E.* 4 *G.* 4. 1 *B. & C.* 506. By a rate, for the relief of the poor of the parish of *Birmingham*, in the county of *Warwick*, the *Birmingham* Gas-light and Coke Company were assessed in respect of dwelling-houses, shops, buildings, land, and premises, and the trunks, pipes, and other apparatus, for the conveyance of gas belonging to the company, situate and being fixed in the ground, in the parish of *Birmingham*, and the profits therefrom within the parish; the annual value being stated at 800*l.* and the assessment 20*l.* Upon appeal against this rate, the sessions confirmed the same, subject to the opinion of the court of K. B. on the following Case: — By a private act of the 59 *G.* 3., certain persons therein named, and their successors, were declared to be a body corporate, by the name of the *Birmingham* Gas-light and Coke Company, and powers were given them " to supply the town with gas, to enter into contracts for the lighting of houses, &c., and with the consent of the commissioners for lighting and paving the town, to break up the soil and pavements of the streets, &c., for the purpose of laying down pipes and other necessary apparatus, for the conveyance of gas from the manufactory to the houses, &c. of the consumers." In pursuance of the provisions of this act, the company purchased the dwelling-houses, shops, buildings, land, and premises mentioned in the assessment, and erected and placed therein retorts, gasometers, purifiers, and other apparatus necessary for the manufacture of gas and coke (part of which apparatus is affixed to the freehold and part is not,) and also by the consent of the aforesaid commissioners, broke up the soil and pavements in the streets, and fixed therein the trunks, pipes, and other apparatus for the conveyance of gas, mentioned in the assessment, and which communicate with the house and manufactory. The company carry on a considerable manufacture of coke and gas upon these premises, and derive a profit from the sale of each of these articles. The coke is conveyed from the premises of the company to those of the purchasers, by means of carts and waggons, and the gas by means of the trunks, pipes, and other apparatus for the conveyance of gas, mentioned in the assessment; gas and coke are both manufactured from coal at a great expence of fuel, and the machinery and apparatus necessary for the manufacture of these articles are also very expensive, and require frequent renewal. *Stock in trade, and the profits of the manufactories in the parish of* Birmingham *are not rated to the poor in this rate* The premises, trunks, pipes, &c. mentioned in the assessment as belonging to the company, if rated to the poor as other lands within the parish, that is to say, if the profits arising from the sale of gas are not included, are worth 200*l.* per annum; but are worth 800*l.*, if the profits arising from the sale of gas are included. If the court of K. B. should be of opinion that the profits accruing to the company from the sale of gas are not rateable, or that they can only be rated as the profits of a manufactory, the rate ought to be

By an act of parliament the *Birmingham* Gas-light and Coke Company had power given to them to supply the town of *B.* with gas, and to lay down pipes for the conveyance of gas from the manufactory to the houses of the consumers. Under this act the company purchased lands and buildings, and there placed retorts, &c. necessary for the manufacture of gas and coke, and fixed in the streets trunks, pipes, &c. for the conveyance of gas. The company derived a considerable profit from the manufacture and sale of coke and gas. The stock in trade, and the profits of other manufactories in the parish of *B.* were not rated to the poor: Held, that the company were not rateable to the amount of the profits of their trade, but for a sum equal in amount to that for which the premises would let to other persons willing to carry on the same business.

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amended, by inserting the sum of 200*l*. therein, in lieu of the sum of 800*l*., and the sum of 5*l*. in lieu of the sum of 20*l*. — The case having been argued. — *Abbott* C. J. The question proposed to us is not, whether the company be rateable for their buildings above ground, or their pipes under ground, but to what amount they are rateable. I am of opinion, that the amount in respect of which they are rateable, is the sum for which the buildings, trunks, and pipes would let to a person who is willing to carry on the business there. It appears from the statement in the case, that the premises, trunks, and pipes, if rated to the poor as other lands in the parish, that is, if the profits arising from the sale of gas are not included, are worth 200*l*. per annum, but if the profits are included, then they are worth 800*l*. per annum. I am of opinion that the profits are not in this case rateable. If they were, a blacksmith's forge might be rated, not at what it would let for, but at the sum which the blacksmith acquires by it. The distinction between the cases cited and the present, is, that here the profits rated are those of a manufactory which are obtained by applying the skill and industry of man to capital brought from a distance for that purpose. They are very different from the profits of canals or of mineral waters, which are natural products arising within the parish, and rendering the land in which they are situate more valuable. For these reasons I am of opinion that the rate must be amended by inserting 200*l*. as the value of the buildings and pipes, and 5*l*. as the sum to be paid.—*Bayley* J. This is really a question of quantum, In most of the cases cited, the question was, whether the property was rateable or not; and though the profits may have been referred to as fixing the quantum, the court never went into that question. Here the question of quantum is presented to the court, and a distinction is taken between the value of the land *per se*, and when it is used for the purposes of the trade. I am of opinion that the company ought to be assessed, not at a sum equal to the annual profits of their trade, but at that sum which the buildings, trunks, and pipes would produce to them if let at an annual rent to persons willing to carry on the trade, or that rent which the company would be forced to pay if the premises were not their own property.—*Holroyd* J. I am of opinion that the rate ought to be amended, as it is stated that in this parish the profits of other manufactories are not rated. In the case of a canal, the land and the water are rated; and here an attempt is made to rate the pipes and the gas; but that cannot be done. The proper criterion for the rate to be imposed upon these lands and buildings is the rent at which they could be let to a person willing to carry on the business. — *Best* J. I think that such a construction ought to be put upon the statute of *Eliz.* as to include the largest portion of productive property, because I feel that the poor rate, and various other burthens, press heavily upon the landed interest. This rate, however, cannot be supported: it is an assessment upon the profits of trade. Now that is not a correct mode of assessment. Land is usually rated not for the entire profits derived from it, but according to the rent which the tenant pays for it; and trade ought not to be rated according to its gross profits, but according to the value of the stock used in the trade. Besides, a rate even upon the net profits of any undertaking must be unjust and unequal, in a place where similar profits and stock in

trade of others are not generally rated. The rate is in this case clearly on the profits of a trade and manufacture. The profits of this company are very different from the tolls of a canal. When a canal is once formed and filled with water, it produces to the proprietor, without any thing further being done, a permanent profit in the shape of tolls; but the gas company could obtain no profit by merely laying down these pipes for the conveyance of gas through the streets. The gas must afterwards be manufactured by the company at a great expence, and sent through those pipes before they will be entitled to any recompence. The gas company stand, therefore, in the same situation as any other manufacturer who produces by artificial means a saleable commodity. Now the profits of such a manufacture could not, with justice, be rated to the relief of the poor in a parish where other profits and other stock in trade are not rated. I think, therefore, that the company ought to be assessed at that annual sum for which the premises and pipes would let to a person willing to carry on the trade, and, therefore, that the rate ought to be amended by inserting the sum of 200*l.* instead of 800*l.*; and 5*l.* instead of 20*l.*—Rate amended accordingly.

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Rex v. *St. Nicholas, Gloucester,* 23 *Geo.* 3. *Cald.* 262. 1 *Bott,* 163. 1 *Nol. P. L.* 81. The mayor and burgesses were possessed of a house in the parish of *St. Nicholas,* in *Gloucester,* and erected a machine in a street leading by the said house for weighing waggons, carts, &c. for which they received 2*d.* *per* ton for what was weighed there, but persons were not compellable to weigh their carriages, &c. The steel-yard, part of the said machine, *was in the said house,* which was called the engine-house: the house, exclusive of the profits of the machine, was worth 5*l.*, and the profits worth about 40*l.* a year: the mayor and burgesses were rated, '*for the machine-house* 24*l.*: 1*l.* 16*s.*'—*Per* Ld. *Mansfield* C. J. The nature of the thing shews that *the machine* is annexed to the freehold; they are one entire thing, and are together rated by the common known name (the machine-house), which comprehends both. The steel-yard is the most valuable part of the house; the house therefore applied to this use, may be said to be built for the steel-yard, and not the steel-yard for the house: the clear profits are undoubtedly rateable, but a liberal allowance ought to be made for wear and tear, labour and attendance.—*Willes* J. said, if the machine be appurtenant to the building, its clear profits are undoubtedly rateable. If a billiard-table stand in a house, and the house should, in respect of such table, let at a higher sum, it would be rateable, while the table continued there and was so let, at the advanced rate.—Rate affirmed.

The profits of a house containing the steel-yard of a weighing machine, are rateable as arising from the house itself, the machine being annexed to the freehold.

Billiard Table.

In *Rex* v. *Hogg, E.* 27 *Geo.* 3. *Cald.* 266. 1 *T. R.* 721. 1 *Bott,* 177. 1 *Nol. P. L.* 83. It was holden that a house wherein there was a carding machine for manufacturing cotton, being *let together with the machine as one entire subject,* (the building being worth only two guineas a-year by itself, but together with the machine rated at 36*l.*,) was properly rated as one subject. It was stated in the case that the engine was not fixed to the premises, but capable of being moved at pleasure.—*Ashhurst* J. considered the house and engine as one entire subject, and therefore rateable as such. *Buller* J. considered them rateable both on that ground, and also

The profits of a house having a carding machine, are rateable.

because the engine was permanent property, visible and yielding profit. And *Grose* J. agreed upon the same grounds.

Annual sum paid for privilege of using a building as a canteen, considered as part of the rent and rateable as such.

Rex v. *Bradford*, *T.* 55 *Geo.* 3. 4 *M.* & *S.* 317. A canteen in barracks demised to *B.* by the barrack-board for a year, at a rent of 15*l.* for the canteen and buildings, and also the farther sum of 510*l.* for the privilege of using the same as a canteen, and selling therein provisions and liquors, &c. usually sold by sutlers, with power of distress for the aggregate sum, was held to be one entire rent for the canteen; and therefore *B.* was held rateable to the relief of the poor as occupier of the canteen, in respect of the 525*l.* aggregate rent, and not merely in respect of the 15*l.*

(*l*) Docks, Canal Tolls, &c.

Lands converted into a dock, are rateable.

Rex v. *Dock Company of Hull*, *E.* 26 *Geo.* 3. 1 *T. R.* 219. 1 *Bott*, 171. 1 *Nol. P. L.* 79. Two justices allowed a rate for the relief of the poor of the parish of *S.*; the rate was confirmed, and the following case was stated, *viz.* That commissioners in pursuance of an act 19 *Geo.* 3., purchased lands in the parish of *S.*, which both before and after the purchase were assessed to all parochial assessments: that the dock company converted three acres of the said land into part of a dock or basin, which in the whole contained ten acres. That the company in 1783 received a clear profit of 3760*l.* for tonnage of ships; that a rate was made upon that part of the dock which lay in *S.* — By the Court. This is landed property lying within the parish, which clearly was the subject of a rate before the passing of this act. Then the question is, whether the act exempts this property which was rateable and rated before? But there are no words of exemption. As between the heir and executor, this is to be considered as personal property; but the legislature did not intend to alter it in any other respect.

The *Hull* Dock Company were held rateable in respect of the tonnage duties received by virtue of statute 14 G. 3. c. 56. although it appeared that the expenditure in repairs during the period for which the rate was made, exceeded the amount of the duties received.

Rex v. *The Hull Dock Company*, *M.* 57 *G.* 3. 5 *M.* & *S.* 394. On the 2d of *November* 1815, a rate was made for the relief of the poor of the parish of *Sculcoates* for six calendar months, commencing on the 20th of *September* then last, in which the Dock Company at *Kingston-upon-Hull* were thus rated:— " Dock Company: Dock and wharf, 2240*l.*: 186*l.* 13*s.* 4*d.*" — Upon appeal to the *Epiphany* quarter sessions, 1816, for the E. R. of *Yorkshire*, the rate was confirmed, subject to the opinion of the court of K. B. upon the following case: — By stat. 14 *G.* 3. *c.* 56. intituled, " An act for making and establishing public quays, or wharfs, at *Kingston-upon-Hull*, for the better securing H. M.'s revenues of customs, and for the benefit of commerce in the port of *Kingston-upon-Hull*, for making a basin or dock, with reservoirs, sluices, roads, and other works, for the accomodation of vessels using the said port," &c. (which is declared to be a public act, and to be judicially noticed as such,) (§ 15.) the Dock Company were empowered and required to make a basin or dock, and also a quay or wharf, and other works therein mentioned, for the general benefit of shipping, and of the trade and commerce of the said port. By § 22., it was enacted, " that the company should, at all times, well and sufficiently repair, maintain, support, and cleanse the basin or dock, and the quay or wharf, and other the works." By § 42. 45. certain rates or duties on ships lading or unlading goods within the

port, and certain wharfage rates on goods which should be landed on the quay, were granted to the company. Besides the emoluments arising from the dock-dues, the company derive considerable emoluments from the rent of warehouses which they have erected, agreeably to the directions of the act. The warehouses are situate in the town of *Hull*, and not within the parish of *Sculcoates*. Two third parts of the dock are situate within the parishes of the *Holy Trinity* and *St. Mary*, in *Hull*, and the remaining third is in the parish of *Sculcoates*. In 1814, the Dock Company resolved to take down and rebuild the lock and entrance basin and side walls of the dock. They acted under the advice of their engineer, who, judging the dock to be in a bad state, directed a general repair. On the 2d of *May*, 1814, the ships were removed out of the dock, and the execution of the works commenced, and continued until the 31st *December* last. The expenditure of the company in respect of these works, from the 20th of *September* (being the day when the rate was made to commence), to the 31st of *December* following, amounted to 5483*l.* 15*s.* 2*d.*, and the receipts of the company in respect of the duties and wharfage rates during the same period amounted only to 2963*l.* 18*s.* 7*d.* The further estimated expenditure of the company in respect of the works, from the 31st of *December* to the 20th of *March*, (when the six months for which the rate was made would expire), would be 1193*l.* 7*s.* 4*d.* and the receipts of the company in respect of the duties and wharfage-rates would be 97*l.* only. The chief part of the expense was incurred in respect of the lock and entrance basin, which are situate in the town of *Hull*, but are essentially necessary to that part of the dock which is situate in *Sculcoates*. From the time of passing the act to the making of the rate in question, the parishioners of *Sculcoates* have, in assessing the Dock Company to the poor rate, annually made a deduction of the company's expenditure in respect of the ordinary repairs of the dock, from the gross annual amount of the company's duties and wharfage-rates. The sums stated in the account of expenses, were all necessarily expended in making the repairs in question, and provided the Dock Company is entitled to deduct the same from their gross receipts, there are not any net proceeds whatever for the use of the company. The company did not, in consequence of the rebuilding of the lock and entrance basin, become entitled to any greater or other duties or wharfage rates than they were before entitled to. The question for the opinion of the court was, whether the company were liable to be rated for the six months for which the rate was made.— After argument,—*Per* Ld. *Ellenborough* C. J. The act of parliament does not require the company to make a dividend at all events, nor does it say, that they shall divide to the extreme limit of the monies received. Suppose an application to be made to this court for a *mandamus*, to compel the company to make a dividend of the whole balance in their hands, if the company were able to shew that the expense of the necessary repairs of the basin for the ensuing year, would be likely to absorb the whole or the greater part of this balance, would the court grant such a *mandamus?* And if the company were in any year to do so improvident an act, as to make a dividend to the uttermost penny, not reserving any thing for prospective demands; as there is a provision in the act (§ 37.) enabling them to make calls from the proprietors for

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the necessary purposes of the act, the consequence would be, that instead of reserving out of the funds in hand, sufficient means to cover these expenses, they must call upon the proprietors to refund what they had improvidently distributed among them. The language of the act is, " that the company shall have power to make such calls of money from the proprietors of shares, to defray the expenses of, or carry on the works authorised by the act, as they from time to time shall find wanting and necessary for those purposes." So that the company may call upon the proprietors of shares to refund what they have received. There is no question as to the rateability of this property; it has very properly been admitted that it is rateable. The question therefore is, whether a rate can be imposed in respect of property which is generally rateable, but the profits of which, owing to certain incidental and necessary expenses, have been for a time exhausted. As to which it is to be observed, that a rate is not always imposed on property in the particular year in which it makes a productive return, for if that were so, there could be no rate in respect of saleable underwoods and the like property, which are productive only after a series of years, except in those years in which the profits arose. But in the case of *Rex* v. *Mirfield*, (10 *East*, 219.) it was decided, after much consideration, that saleable underwoods were rateable annually, in proportion to their value, though they should happen not to be cut down more than once in 21 years. In the present case, the company have no money in hand, but they have a property, which upon an average is productive. To hold that in every case where property is rateable, an account is to be taken, for the particular period for which the rate is imposed, of the precise amount of its productiveness, and that if there is the smallest decrease, the rate is to be reduced *pro tanto*, would in my judgment be infinitely inconvenient. Every house must then have its separate assessment, in order to let in the particular deductions belonging to each; and this mode of assessment would be open to every species of fraud, because the largest deductions would be attempted to be thrown on periods of the greatest pressure. It appears to me that this rate is well imposed, and that the average profits of the company are not liable to be merged in the partial expenditure of any particular period. I think, therefore, this order ought to be confirmed. — *Bayley* J. I agree that this rate is well imposed. The case does not state that this property, *communibus annis*, is not productive of profit, but only, that during this particular period it was not profitable. It appears that the company are in possession of property which is *primâ facie* rateable; the rate, therefore, is well imposed, unless the property is to be exempted, on the ground of its not being profitable at the particular period for which the assessment is made. As to which, *Rex* v. *Mirfield* is a clear authority, that the principle which is to govern is, whether it be profitable *communibus annis*. — *Abbott* J. It has been admitted that the company is in possession of property which is rateable generally, and this property is of considerable annual value. I think the company cannot relieve themselves from this rate, by shewing, that, on occasion of some extraordinary expenditure, during the particular period for which the rate is made, that which would have gone to the account of profits, has been otherwise consumed. To hold to any such rule

would, in my opinion, be productive of great inconvenience; for by the same rule, I know not what answer could be given to the farm-holder or householder, if they were to claim a similar exemption, because of the extraordinary expense which they had incurred in the maintenance or improvement of their house or land. Therefore, as it seems to me, the order of sessions must be confirmed; there is not any question before us as to the *quantum*.—*Holroyd* J. I am of the same opinion. The only doubt which I have entertained, has been on § 22., which obliges the company to repair the dock and other works; and if, under that section, the specific rates had been, so far as they were required, appropriated to that purpose only, I should have entertained considerable doubt whether any property vested in the trustees, which could properly be made the subject of rate, beyond the surplus which might happen to remain in their hands, after satisfying the expenses attending the maintenance and repair of the works. But the case is not so, for I find, by § 42., the duties payable by virtue of the act are vested in the company as their own proper monies, and for their use, in consideration of the expenses incurred by them in making and maintaining the works; and by § 53., they are to take an account, annually, and declare what dividend shall be made; so that they stand in the same situation with any other canal company. If so, then here is property which is productive of profit although it has not made any return during the time for which the rate is made; but it is not enough to exempt property from being rated, to shew, that the extraordinary expenses of a particular period have absorbed the profits of that period.—Order of sessions confirmed.

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Rex v. *Calder and Hebble Navigation Company*, *H.* 58 *Geo.* 3. 1 *B.* & *A.* 263. Where a statute empowered the proprietors of a canal to take rates in respect of vessels navigating the same, and expressly exempted such *rates* from the payment of all taxes, rates, &c. it was holden that the land occupied by the canal was also thereby exempted from the poor's rate.

Where canal rates &c. are by stat. exempt from all taxes and assessments, the land occupied by the canal is also exempt from poor's rate.

A rate on land is in effect a rate on the profits of the land, for where there are no profits there is no beneficial occupation; now the rates and duties being exempted in this case, and there being no other profits of the land, I think the land itself must be considered as exempted. *Per Holroyd* J., *S. C.*

Rex v. *Grand Junction Canal Company*, *H.* 58 *Geo.* 3. 1 *B.* & *A.* 289. A canal act directed that the company should be rated for all lands and buildings in the same proportion as other lands and buildings lying near the same, and as the same would be rateable if they were the property of individuals in their natural capacity; and a subsequent act directed that all rates and assessments upon the personal estate of the company should be assessed in every parish in proportion to the length of the canal in such parish. The court of K. B. held, that the company were liable to be rated for their lands, &c. only at the same value as other adjacent lands, and not according to the improved value derived from the land being used for the purposes of the canal.

Lands, and buildings of canal company, when not rateable by improved value.

Rex v. *The Mayor*, &c. *of London*, *M.* 31 *Geo.* 3. 4 *T. R.* 21. 1 *Bott*, 196. 1 *Nol. P. L.* 79. 87. 179. 212. The defendants were rated *for the barge-way and toll-gate* in the hamlet of *Hampton Wick*, *Middlesex*, and appealed against the same, and the sessions confirmed the rate. The substance of the facts stated to K. B.

Where tolls are paid for passing a certain barge-way, the way is rateable for those profits.

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was, that the appellants, by virtue of an act of parliament, purchased an ancient barge-way or towing-path within the hamlet of *H. W.* upon the *Thames* bank, and certain ancient tolls payable in respect of horses drawing barges along the same. The appellants leased the herbage of the way and path for a sum which was appropriated to the navigation; the lessee occupied and paid rates for the herbage. The old tolls were discontinued, and new tolls were taken for all barges navigating between *London Bridge* and the *City Stone*, according to the quantity of tonnage; 1½*d.* *per* ton was payable and paid to the appellants for every barge towed along a certain part of the barge-way, and *H. W.* is within that limit, and the tolls were collected elsewhere, and not at *H. W.*—Ld. *Kenyon* C. J. The difficulty has arisen from not considering *what* is rated. It is not a rate on the tolls, but the close of land called the barge-way, and the toll-gate. Now the questions are, 1st, Whether the property be or be not rateable? 2d, Who should be rated for it? First, the subject-matter of the rate is real property, it is land, tenement, or hereditament; and it is liable to be rated unless it be so circumstanced that there is no occupier on whom the rate can be imposed. But here the city of *London* are occupiers; for the lessee's interest is confined to the herbage and pasture. And there is no doubt that they are in possession of the actual occupation of this towing-path.

Lessee of fishings within the river Severn held rateable as a beneficial occupier of land.

Rex v. *Ellis*, *T.* 53 *Geo.* 3. 1 *M. & S.* 652. *Bott, Cont.* 107. 1 *Nol. P. L.* 79. 86. The defendant was rated to the relief of the poor of the parish of *Westbury-upon-Severn*, in the county of *Gloucester*, as the lessee of all those fishings of the halves and halven-doles with the fishings called *Unlawater*, with the appurtenances to the halves due and accustomed within the river *Severn*, between certain limits within a manor bordering on the said river. Against which rate he appealed to the quarter-sessions, who confirmed the rate, subject, &c.—After argument, Ld. *Ellenborough* C. J. said, the rate has been confirmed by the sessions; we must therefore see that they have done wrong, before we determine that their adjudication ought to be quashed. I will not assume that a fishery, as an incorporeal hereditament, is the subject of a rate. The question then is, Whether there be any land connected with this fishery so as to be the subject of rate. What is the thing granted? In 1625 the king grants "all that our fishery of the halves and halven-doles with the fishings called *Unlawater*, with the appurtenances to the halves due and accustomed." I could have wished that the sessions had explained to us, if any lights were afforded by the evidence, the meaning of the term "halves and halven-doles," which is not very familiar to us. It has been treated in argument as if it related to half of the river, and the grant being "with the appurtenances to the halves due and accustomed," is in favour of the construction of the half *ad filum aquæ;* which, according to Ld. *Hale*, belongs by the constant custom of the country to the lords of the manors on either side of the river; in support of which custom he cites the Ld. *Barclay*'s case. But whatever its meaning may be, I think from the grant of "the fishings with the appurtenances to the halves due and accustomed," it appears distinctly that these halves and halven-doles are of the nature of land, or some local limit within which the fishery connected with the soil is to be exercised. I

cannot consider it otherwise than as a grant of something territorial. I do not found my opinion on this being a sole right of fishery, or coming within any particular description of fishery under which the soil must pass; but I think that under the circumstances we ought not to quash the order of sessions, unless we are satisfied that the sessions could not, upon any reasonable ground, conclude that by this grant of halves and halven-doles, &c. some territorial right was conveyed. The other judges concurred.—Order of sessions confirmed. Rex v. Ellis.

Rex v. *Bell*, *T.* 56 *Geo* 3. 5 *M.* & *S.* 221. Upon appeal by *Bell* to the quarter sessions for the county of *Cumberland*, against a rate made for the relief of the poor of the township of *Cockermouth* the sessions confirmed the rate, subject to the opinion of the court of K. B. upon the following case.

The lessee of market tolls in gross not incident to the soil, is not rateable to the poor in respect of his occupancy thereof.

The Earl of *Egremont* is lord of the manor of *Cockermouth*, and owner of the soil of the streets of *Cockermouth*. He, or his lessees, have from time immemorial collected and received certain tolls of corn sold in the market, the toll has, however, been hitherto collected at the commencement of the market out of every sack brought and exposed for sale. The earl, or his lessees, also receive payments for stallage there from persons using stalls, and exposing upon them such things for sale as are usually sold on stalls; and the earl, or his lessees, take the sweepings of the streets. The market is a market by prescription, and is holden in the public street and highway in the town of *Cockermouth*, where the sacks of corn are set down for sale, and the tolls are there taken. The tolls of corn are a handful out of each sack; *Bell* is the present lessee of them, and pays a yearly rent of 50*l*, to the earl, and as such lessee takes the tolls of corn in the market; but he is not an inhabitant of the township of *Cockermouth*, nor possessed of any property within it, except these tolls; the tolls yield an annual profit. *Bell* is rated in the assessment for the relief of the poor of *Cockermouth* as follows:—

"*David Bell*, corn tolls .... 15*s*."

He is not the lessee of the stallage, nor of the sweepings of the market, which are rented by other persons, who are severally rated for them to the relief of the poor in the same rate. The question is, whether *Bell* is rateable in respect of these tolls. In support of the order of sessions it was contended that *Bell* was rateable as occupier of the soil of the market; not, indeed, as having the entire occupancy, but as occupying it by a partial pernancy of the profits, which is enough (*Rex* v. *Baptist Mill Company*, 1 *M.* & *S.* 612.) These tolls are in the nature of stallage or pickage; for the setting down sacks in the market is an user of the soil, of the same nature, if not to the same extent, as pitching a stall; and it has been adjudged, that although every man has, of common right, liberty to come into a public market for the purpose of buying and selling, yet has he not, of common right, liberty to place a stall there, and trespass may be maintained for it by the owner of the soil. (*Mayor of Northampton* v. *Ward*, 2 *Str.* 1238. *Mayor of Norwich* v. *Swann*, 2 *Blac. Rep.* 1116.)—Ld. *Ellenborough* C. J. I cannot say, upon this statement, that the appellant is an occupier of land. Would he not be equally entitled to the toll, although the sacks were not set down

in the market, but were upheld on the shoulders of those who so exposed the corn to sale? There is nothing to give this toll a corporeal quality.— *Bayley* J. *Bell* is assessed in the rate for corn tolls, which, it is plain from the statement of the case, were mere market tolls, and not incident to the soil. In *Heddey* v. *Welhouse* (*Moor*, 474. *cited in* 2 *Str.* 1239.) the distinction is well taken; for it is said if the king grant a fair or market with toll certain to one and his heirs, to be holden in land, which is borough *English*, and the grantee die, the heir at the common law shall have the market and the toll; but the younger son shall have the stallage and pickage, with the soil, by the custom. — *Holroyd* J. (*a*) These tolls would be equally payable if the soil had belonged to another. — Order quashed.

(*a*) *Abbott* J. was absent on the special commission.

5. Property where to be rated.

Tolls not rateable per se, but contra, when mixed with a rate upon other property, which, as having substance and locality within the parish, is properly rateable there.

Upon the subject of tolls themselves, two questions have arisen; first, whether they are rateable; and secondly, *where* they are rateable,

Rex v. *Sir A. Macdonald and others*, devisees in trust under the will of the late Duke of *Bridgewater*, *E.* 50 *Geo.* 3, 12 *East*, 324. *Bott*, *Cont.* 75. 1 *Nol. P. L.* 79. 80. 88. 129. On appeal against a poor rate made for the township of *Manchester*, the rate was confirmed, subject to the opinion of K. B. on the following case: —

The property in respect of which the appeal was made, was described in the assessment as the *Rochdale* canal, lock, tunnel, dues or rates; and certain warehouses were named; and the assessment was made upon Sir *Archibald Macdonald* (and others), trustees of the late Duke of *Bridgewater*. The appellants were not, at the time of making the assessment, *inhabitants of Manchester*, but were then and still are entitled to and in the receipt of the tonnage in respect of vessels passing through the lock built upon the *Rochdale* canal, under an act of the 34 *Geo.* 3. The 2d. sect. reciting that "Whereas the Duke of *Bridgewater* hath expended a considerable sum in making wharfs for the convenience of the public, adjoining or near to his canal at *Manchester*, and when the proposed junction is made with his canal, the profits of the Duke of *Bridgewater* arising from his wharfs will be considerably diminished; he nevertheless consents to such junction on being authorised to build a lock upon the *Rochdale* canal near the junction, and to collect certain rates hereinafter mentioned, as a compensation for such diminution in the profits of his wharfage; authorises the duke, &c. "at his or their own expence, to build a proper lock upon the said *Rochdale* canal, at or near *Castle Field*, &c.; and to take at the said lock for his and their own benefit, as a compensation, &c., the following rates, viz." (naming rates for goods carried from the *Rochdale* canal to the dock;) "which rates shall be payable and paid at or near the said lock to the said duke, &c. and shall be collected by such person as the said duke, &c. shall by writing, &c. appoint to receive the same," The lock was built in pursuance of this act. The tonnage is of the amount charged in the assessment. The appellants *did and do still occupy* the lock and warehouses and wharfs mentioned therein; and they are of the value assessed.

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The case then set forth the names of several individuals on whom notices of appeal were served, who were, at the time of the assessment, inhabitants of *Manchester*, and respectively possessed of visible stocks in trade in that township; and were then personally liable to be assessed to the relief of the poor in respect thereof, if by law such property be rateable in such assessment: but that neither of them were rated in respect of their said stocks in trade or other personal property; neither were any inhabitants of *Manchester* or other persons rated in respect of their personal property in the township. The proprietors of the *Rochdale* Canal Company were not rated for their locks upon the said canal situated within the township, or for the tonnage, tolls, duties, or rates arising from such locks, or otherwise from the said canal within *Manchester;* this being provided for by an act of the 47 *Geo.* 3. In addition to the proof already given, the appellants gave further evidence of the amount of the clear surplus of stock in trade or other personal property, in the instances of the several persons contained in the notice of appeal; but the justices not being satisfied, from the evidence offered, that there was any sum of surplus by which they could amend the rate, by adding the names of the persons in respect of whom such further evidence was given, confirmed the rate. — After argument, *per* Ld. *Ellenborough* C. J. The court will not contradict the decided cases, by discharging the rule for quashing the order of sessions in this case. First, as to the omission of rating stock in trade in *Manchester*. In order to include particular individuals in the rate, a case must be made out in evidence against those individuals: here there was an attempt to do it by the appellants, but they failed in satisfying the court below upon the facts. We have no concern with the conclusion of fact which the justices have drawn as they state to us; and I do not say that I should have come to the same conclusion: but the justices have only found that certain persons, inhabitants of *Manchester*, were possessed at the time of visible stocks in trade within the township, and were personally liable to be assessed to the poor rate in respect thereof, if by law such property be liable to be rated. Now stock in trade, merely as being *visible*, is not liable to be rated, but to make it rateable it must also be *productive:* but the justices have found that it was not productive, or what is the same in effect, that it was not proved to be so to their satisfaction. That finding concludes the question. And then the remaining question stands on the rateability of the property of the trustees. The case states that they are the occupiers of *the lock* and of the several wharfs and warehouses mentioned in the rate; and it is not disputed that the property rated yields profit; but it is objected that they are rated for *dues* or *rates*, that is, for the tolls payable at the lock under the act of parliament; and that the court have held tolls not to be rateable. But the court have only said that tolls are not rateable *per se*, but only when connected and rated conjunctively with real and substantial property, situated in the parish; which, as yielding profit there by means of the tolls, is the proper subject of rating within the act of *Elizabeth*. Now here the lock itself is rated, which is something real and substantial, locally situated in the township, and producing profit; and the addition of the *dues* or *rates* is merely giving other names

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for the same thing. These dues or rates are given by the act of parliament as a compensation to the Duke of *Bridgewater*, for the loss of his profits of certain wharfs adjoining to his canal at *Manchester*; which wharfs were before clearly rateable in respect of those profits: the rates, therefore, made payable at the lock were substituted as a compensation for and in lieu of the wharfage before enjoyed: they are the substituted medium of profit arising, as the act describes, from those wharfs. The court, therefore, by this decision, will not break in upon that which they have recedently decided, that tolls *per se*, and when not mixed with a rate upon other property, which, as having substance and locality within the parish, is properly rateable there, are not liable to be rated.— The other judges concurring, the rate and order of sessions were confirmed.

The tolls of a light-house, where rateable.

Rex v. *Rebowe*, *M.* 12 *Geo.* 3. 1 *Bott*, 142. 1 *Nol. P. L.* 86. 99. 215. Two light-houses were erected at *Harwich* by Sir *I. R.* by virtue of a patent, which also granted to him, for the maintenance thereof, certain tolls payable by all ships coming into or passing by the harbour. Part of these tolls were collected by the defendant at *Harwich*, and the remainder in other parts of the kingdom. He did not reside in the parish, and was no occupier there, excepting by having two persons who lodged in one of the light-houses, to take care of them. He was rated to the light-houses, and the sessions confirmed the rate. The court decided that the tolls were not rateable there, not being locally situated in the parish. According to what was stated in argument in the case of *Rex* v. *Cardington*, (a subsequent case,) the ground of decision was, that the vessels did *not* come within the parish, and therefore the tolls were *not due there.*

Note. In a MS. note of this case in the possession of Mr. *Douglas*, it is expressly stated that the Court observed, that it was not set forth in the case, that *Rebowe* was rated *for the house*, but only for the *tolls*. *Doug.* 118. *n.* 1 *Bott*, 143.

Rex v. *Tynemouth*, *H.* 50 *Geo.* 3. 12 *East* 46., *Bott*, *Cont.* 74. 1 *Nol. P. L.* 100. 177. 215. Upon an appeal of *W. Fowke*, esq., against a rate for the relief of the poor of the township of *Tynemouth*, in the county of *Northumberland*, the sessions amended the rate by striking out Mr. *F.*'s name, and that of his servant *R. W.*, subject to the opinion of the court upon two points; 1st, whether *R. W.* be rateable for two rooms in *Tynemouth* light-house? 2d. whether Mr. *F.* be rateable for the tolls in respect of the light-house? By certain letters patent of the 17 *C.* 2. and by the 42 *Geo.* 3., Mr. *F.* is intituled to *Tynemouth* light-house, and certain tolls payable in respect of the same, for every ship passing by the light-house, and belonging or trading to the ports of *Newcastle* and *Sunderland*, or either of them, or the creeks or members of the same; and for certain tolls from every ship belonging to any foreigner or stranger coming or passing by the light-house. The light-house is in the parish of *Tynemouth*, the tolls are payable upon ships sailing on the *German* ocean, and benefited by it. They never come within the township of *Tynemouth*, and neither Mr. *F.* nor any of the receivers of the tolls or duties reside in the township of *Tynemouth*, and the tolls are collected out of it by a person appointed by Mr. *F.* *R. W.* is a servant of Mr. *F.* at an annual salary, and resides within the walls

of the light-house, to take care of the light-house: and is rated for these two rooms, as occupier, at 6*d.* And Mr. *F.* is rated for the tolls, in respect of the light-house, at 750*l.*—Lord *Ellenborough* C. J. It is no question now whether this property could be rated in some other way; as if the light-house, whose light is the meritorious cause of earning the tolls, were in consequence let at a larger rent; but this is a rate specially upon the tolls, and therefore the case is not distinguishable from *Rex* v. *Rebowe*; which is so immediately *in specie*, and in all its circumstances the same, and has been so long considered and acted upon as law, that it concludes the question. What local property is there within the township on which this rate or the tolls can be levied? The tolls are not received there; nor do the ships from which they are collected come within the township; the subject-matter of the rate has no locality within this township. As to the other point, it is equally clear that it is the occupation of the master by his servant, and not the occupation of the servant himself, and therefore the rate on the servant is bad on that ground.— Order of sessions confirmed.

Rex v. Tynemouth. Tolls of a light-house.

(*Ante*, 108.)

On a motion to confirm a tax laid by the justices on the *toll* of a corporation, *Holt* C. J. said, That on a reference to him by both parties, he was of opinion that the toll was not exempted, but chargeable, though part of it was to maintain the mayor. 3 *Keb.* 540.

Tolls taken by a corporation are rateable.

Rex v. *Cardington, E.* 17 *Geo.* 3. 2 *Cowp.* 581. 1 *Bott*, 154. 1 *Nol. P. L.* 87. 101. 207. 215. This case came before the court upon a rule to shew cause why an order of sessions, quashing a rate for relief of the poor of the parish of *Cardington*, should not be quashed as to the assessment upon *Ashley Palmer*, esq. The case specially stated, that *Ashley Palmer*, esq., was seised in fee of the right of navigation of that part of the river *Ouse*, which lies between *Erith* in the county of *Huntingdon*, and the town of *Bedford*, and of all the tolls arising for the carriage of coals and other goods upon that part of the navigation: That he had power to erect sluices and staunches for the better keeping up the water and carrying on the said navigation, and that tolls were paid for passing through every sluice, and in a different rate for different sluices: That one sluice was erected in the parish of *Cardington*, at which the toll was 3*d.* a chaldron or load weight: That Mr. *Palmer* did not reside in the parish of *Cardington*, nor had he any person resident at that sluice to receive the tolls; but that the tolls for that sluice were received at *Barford* or *Eaton*: That neither Mr. *Palmer*, nor any other of the former proprietors of that navigation, were assessed to the poor rates for their sluices or for the tolls or profits; but they had for many years been assessed to the land tax.—The case having been argued; the court ordered it to stand over, that enquiry might be made as to the custom of rating this description of property in other places. In answer to the enquiries, it was returned on the part of the plaintiff, that out of 14 sluices, being the whole number erected upon this navigation, one only was rated to the poor; that the river *Ivil*, near *Bury*, the *Northampton* river, *Larke*, *Ouse*, and *Stower* were none of them taxed. On behalf of the defendant it was stated, that the tolls at *Marlow*, *Oxford*, *Reading*, and several others on the river *Thames*, were all rated

Tolls taken upon a river for passing a sluice are rateable, where they become due, not where they are received.

Rex v. Cardington.

to the poor. Upon the whole, the court was of opinion, that these tolls were rateable; and therefore directed the rule for quashing the order of sessions to be made absolute, and affirmed the rate.

Tolls where rateable.

In *Rex* v. *Aire and Calder Navigation, M.* 29 *Geo.* 3. 2 *T. R.* 660. 1 *Bott,* 117.

And also in *Rex* v. *Page, H.* 32 *Geo.* 3. 4 *T. R.* 543. 1 *Bott,* 84. It was determined, that the tolls for goods carried on canals were rateable where the voyage was completed. But these decisions were expressly overruled in *Rex* v. *Nicholson, post.*

In *Rex* v. *The Proprietors of the Stafford and Worcester Canal Navigation, M.* 40 *Geo.* 3. 8 *T. R.* 340. 1 *Bott,* 89. 1 *Nol. P. L.* 80. 88. 111. The company were rated in the hamlet of *Lower Milton* "for their basins, towing-paths, and that part of their canal and locks lying within *Lower Milton,* and for the tolls and duties *arising therefrom.*"

The *basins, towing-paths, canal, and locks,* being local visible property there, and the *tolls and duties arising therefrom,* classed and connected as they are with the local visible property rated, were considered as resulting from that local and visible property, and held liable to be there rated.

Lands and tenements.

For lands and tenements the assessment is, of course, made where they lie. *Dalt.* 165.

17 G. 2. c. 37. Marsh lands drained.

By stat. 17 Geo. 2. c. 37. *When waste lands, which were formerly fens and marsh, are drained and improved and the parish to which they belong cannot be ascertained, the occupier thereof, or of houses built thereon, tenements, tithes arising therefrom, mines therein, and saleable underwoods thereon growing, or hereafter to grow, are to be rated to the parish that lies nearest to such lands; and if any dispute shall arise as to what parish or place they ought to be rated to, the justices in quarter sessions shall, after due notice given to the persons interested, and to the parishes and places abutting and adjoining the said lands, cause them to be assessed as they shall think meet, and their determination and allotment is to be final and conclusive.*

So also the artificial profits of lands are rateable where the lands lie; as was determined in the case of *Atkins* v. *Davis, T.* 23 *Geo.* 3. *Cald.* 315. 1 *Nol. P. L.* 73. 102. 207. which was a question as to the rateability of the *London* waterworks, and also where they were rateable. The profits arose from the sale of the water which was by means of pipes conveyed from the engine to distant parts of the city. And it was held that the company were rateable for the profits of the concern, and rateable in the parish in which the engine stood.

Corporation of Bath erected reservoirs of water and supplied with water the parishes of *A. B.* and *C.* held rateable in *A.* for so much of the profit from these reservoirs as they made in *A.*, but not for

Rex v. *The Mayor, Aldermen, and Citizens of Bath, M.* 52 *G.* 3. 14 *East,* 609. *Bott, Cont.* 91. 1 *Nol. P. L.* 72. 80. 209, 210. By a rate duly made, allowed, and published for the relief of the poor of the parish of *Lyncomb* and *Widcomb,* in the county of *Somerset,* the corporation of *Bath* were rated as occupiers of certain springs and reservoirs in the sum of 22*l.* 10*s.* The corporation appealed against this rate, and the sessions confirmed it, subject to the opinion of the court of K. B. upon the following case. The mayor, &c. of *Bath* were incorporated by charter. By 6 *Geo.* 3. *c.* 70. "for (amongst other purposes) better supplying the inhabitants of the said city, liberties, and precincts with water," (a public

act) after reciting that there was a scarcity of water within the city, &c., and that there were in the neighbourhood of the said city several springs of water belonging to the corporation, it is enacted, that the corporation shall have full power to cause water to be conveyed to the said city, &c. from such springs, and it gives them authority to enter upon and break up any soil within two miles of the city, and the soil or pavement of any street within the city, in order to drain and collect the water of the said springs, and to make reservoirs sufficient for keeping such water, and to erect conduits, water-houses, and engines necessary for distributing such water into the several parts of the said city, &c. and to lay under ground aqueducts and pipes most convenient for the same purpose. And it vests the right and property of all watercourses leading from the said springs to the said city, and also of all reservoirs, conduits, water-houses, engines, buildings, aqueducts, and pipes erected or used for the purpose aforesaid, in the mayor, &c. of *Bath*.—Under this act, the corporation made several reservoirs in the parish of *Lyncomb* and *Widcomb*, where the springs aforesaid are situated, in the neighbourhood of *Bath*, no part of the said city, &c. lying within the said parish. The reservoirs are walled in and roofed; aqueducts and pipes were also laid under ground for conveying the water which first passes through a part of the said parish of *Lyncomb* and *Widcomb* called *Holloway*, and from thence along a certain bridge called the *Old Bridge*, over the river *Avon*, into and through the parish of *St. James* and the parish of *St. Peter* and *St. Paul*, which two parishes are within the city of *Bath*, &c. All the water flowing from the said springs is collected into the said reservoirs, from each of which it is distributed, by means of a main pipe and cock, under the charge of an officer of the corporation, who has no residence upon the spot, but goes there twice a day for the purpose of turning the cocks and distributing the water; and from these main pipes it is distributed by smaller pipes to the houses of various inhabitants, both of that part of the parish of *Lyncomb* and *Widcomb* called *Holloway*, and in the parishes of *St. James* and *St. Peter* and *St. Paul* aforesaid, the cocks being turned at stated times by officers of the corporation. All the said pipes are originally derived from and connected with the said springs and reservoirs in the said parish of *Lyncomb* and *Widcomb*. The occupiers of the several houses pay a rate to the corporation for the water with which they are respectively supplied, and the amount of this rate is in the discretion of the corporation. The corporation of *Bath* has been all along in the occupation of the said springs and reservoirs, and of the land included within the walls thereof, and they are the same springs and reservoirs mentioned in the aforesaid rate. The annual profits arising to the said corporation from the water thus distributed from these springs and reservoirs amount to 600*l.* in the whole, of which 50*l.* are collected from the occupiers of houses in that part of the parish of *Lyncomb* and *Widcomb* called *Holloway*, and 550*l.* from the occupiers of houses in the parishes of *St. James* and *St. Peter* and *St. Paul*, in *Bath*; the whole of this 600*l.* is accounted for and paid at the office of the chamberlain of the corporation in *Bath*. The said sum of 22*l.* 10*s.*, for which the said springs and reservoirs are rated, is *upon the whole sum of* 600*l.* The lands in which

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the entire profits made in *A B.* and *C.*

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the said springs and reservoirs are situated are rated separately in the names of the respective occupiers, exclusive of the said springs and reservoirs, and the land thereof. The questions reserved for the opinion of the court were, 1*st*, Whether the corporation were liable to be rated at all in respect of the said springs and reservoirs to the poor of the parish of *Lyncomb* and *Widcomb;* and, if so liable, 2*dly*, whether they were to be rated to the parish of *Lyncomb* and *Widcomb* upon the whole of the profits of the water which flows from the said springs and reservoirs, or only upon so much of those profits as are collected from the occupiers of houses within the said parish.—After argument, Ld. *Ellenborough* C. J. said, The mayor, &c. of *Bath* must be rated under the stat. 43 *Eliz.* if at all, for the description of property within mentioned, either in the character of *inhabitants* of the parish of *Lyncomb* and *Widcomb*, or as the *occupiers* of some of the different kinds of property particularly specified in the act as the subjects of rate. Under various and late decisions, and particularly that of *The King* v. *Nicholson*, (12 *East*, 230.) in which the several cases on the subject are referred to, and which have been again cited on the present argument, it has been established as the sound construction of the 43 *Eliz.* that the word *inhabitants* in *that act* is only satisfied by a residence within the parish. And as there is no doubt that the corporation of *Bath* are not residents, they cannot be charged *eo nomine* as *inhabitants* in this case; and, therefore, if rateable at all, must be rated as the *occupiers* of some of the several descriptions of property enumerated in the act. That they are *occupiers* of the *reservoirs* which they are empowered to make, and in which the water which they are also authorised to collect is kept, and that such *reservoirs* and *the water kept therein* are comprehended within the legal description of *land* (one of the descriptions of rateable property mentioned in the stat. 43 *Eliz.*) will not admit of a doubt; and it is equally unquestionable that they constitute local and visible property in the parish of *Lyncomb* and *Widcomb*, where they are situate. This disposes of the first question submitted to our opinion, viz. whether the corporation is liable to be rated at all for their property in the parish of *Lyncomb* and *Widcomb*, where the land lies in which the springs and reservoirs are situate. As to the second question, whether the corporation is liable to be rated in this parish for the *whole* of the profits of the water which flows from the springs and reservoirs, or only for the profits collected in this particular parish; it should seem to follow as a consequence from what has been said already, that if the corporation of *Bath* be occupiers of any local visible property producing profit in any other parish, and falling by reasonable construction within the same description of property as the reservoirs already mentioned, they should be liable in like manner to be rated for it *pro tanto* in such other parish. The water is stated to be conveyed from the reservoirs in *Lyncomb* and *Widcomb* over the river *Avon*, and thence distributed into and through the several parishes in the city of *Bath*, and conducted to the houses of the inhabitants there by means of main pipes and smaller pipes derived from these reservoirs, and for which the occupiers of the several houses in these parishes in *Bath* which are so supplied pay a water rent to the corporation. As so large a portion of the apparatus, by the

aid of which the water is conveyed along the two several parishes in *Bath*, and the soil itself within these parishes on which these pipes rest, and on which soil the corporation are certainly under the powers of this special act authorised to lay them, must be considered as mainly conducive to the acquiring the water rent which in so large a proportion (namely, 11 to 1, or 550*l.* out of 600*l.*) is received for the use of it in the two *Bath* parishes, it is impossible to say that the corporation ought to be rated as they are, that is, for the whole of such profits in the parish of *Lyncomb* and *Widcomb* alone; and if they ought not to have been so rated, the rate appealed against must be quashed. — A great deal of stress has been laid in the argument of this case on the part of the respondents on the supposed authority of the case of *Atkins and others* v. *Davis and others*, reported in *Cald.* 313.; but as the judges of the court of K. B. were equally divided, no decision which can be relied on as authority was come to in this Court. And although it may be collected from Ld. *Loughborough*'s judgment in the Exchequer Chamber, that he thought that "the *proper place* where the value of the whole is to be taken is the *fountain head* from which the whole is to be distributed," thereby intimating two things, 1*st*, that the whole profit should be assessed at *one* place; and 2*dly*, that such one place should be the *fountain head;* yet he adds, "however it is not very material to consider that, for upon the present action it is certainly sufficient to warrant the levying the distress that here was a foundation to make a rate and *some property* rateable. And indeed upon that ground, *viz.* of the form of the action which assumed the distress to be illegal *in toto*, and upon the difference which is to be found in the language of the statutes 27 & 43 *Eliz.* did the united judgment of the court of Exchequer Chamber proceed, and not upon the supposed rateability of the whole profits at the fountain head. In order to decide the questions reserved for our determination upon this case, it is by no means necessary or proper for us to pronounce in what parishes besides that of *Lyncomb* and *Widcomb*, and in what proportions the corporation shall be in future charged. Indeed we have no adequate materials before us for such a decision. It is enough upon the present occasion to state, that the rate in question by which the corporation has been charged for the *whole* of their profits in that *one* parish is on that account bad, and must be quashed.

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The eventual profits of lands, resulting from some alterations in the surface of the land, are rateable in the parish where the lands receiving the benefit lie, and not where the alteration is.

Land converted into drainage.

Rex v. *Sculcoates*, *H.* 50 *Geo.* 3. 12 *East*, 40. *Bott Cont.* 72. 1 *Nol. P. L.* 80. 189. 213. The parish officers of *Sculcoates*, in the rate made for the relief of the poor, charged the commissioners of the *Beverley* and *Barmston* drainage in a certain sum in respect of certain lands and buildings in that parish, purchased by them and converted into a drain, under the act of parliament after mentioned, which land was cut for the purpose of the drainage, and is now covered with water, containing six acres. Against this the commissioners appealed and the sessions quashed the rate. The special case stated that by the act (38 *Geo.* 3. *c.*63.) commissioners were appointed for draining low grounds in certain parishes therein named. That for this purpose they purchased

Rex v Sculcoates.

the lands and buildings now rated, which lands and buildings were converted into part of a drain extending from *Beverley* to *Sculcoates*, 10 miles; *but no part of the lands thereto adjoining are benefited thereby:* previous to the purchase these lands and buildings had been rated, but since the making of the drain they had not. And further, that the proprietors of the said low grounds had been benefited by this drainage.—That the commissioners were not rateable, as having a mere naked trust and no beneficial interest, was contended on the authority of the *Salter's Load Sluice Navigation* case. (4 *T. R.* 730.) On the other side were urged § 38. of the above act, conveying the estates to the commissioners and their heirs, who were therefore in the actual occupation of the property: Also § 39., which says that they and their heirs shall be deemed in law in actual possession to all intents and purposes whatsoever: And § 98., by which they are empowered to bring actions of trespass. Ld. *Ellenborough* C. J. said he could not find by the act that the commissioners were in the receipt of any fund for their own benefit, or were trustees of any divisible fund in their hands in this parish, for the benefit of others; and certainly not so for their own benefit. That the only persons benefited were the owners of lands benefited by the drainage in other parishes, and in those liable to be rated for the improved value of their premises. *Bayley* J. asked, if there was any beneficial interest derived in this parish from these works. The cases *Rex* v. *Gardner*, *Rex* v. *Aberavon*, and *Rex* v. *The Dock Company of Hull*, were then cited.—Ld. *Ellenborough* C. J. In all these cases the property rated yielded pecuniary benefit, or that which was capable of being estimated and converted into pecuniary benefit, within the parish to the parties interested, but here the benefit results to the lands drained which lie in other parishes, and the property would be liable to a double rate if it were also rateable in the hands of the commissioners. Here is no benefit received by these commissioners for themselves or others within this parish, which is capable of being rated. The benefit is all divided in other parishes. The dock company of *Hull* were in the receipt of tolls for the benefit of the share-holders in respect of the use of the docks within the parish in which they were rated: but the commissioners are the mere instruments of benefit to land owners elsewhere. I know of no instance where a

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canal company has been held rateable for the mere space occupied by the canal (*a*) in a particular parish if no tolls were received or become due there; and I cannot distinguish between land converted into a drainage and a canal. And finally he delivered the opinion of the court, that the commissioners having no beneficial occupation of the property in this parish, either for themselves or others, were not liable to be rated.—Order of sessions confirmed.

Ships are rateable at their home.

In *Rex* v. *White and others*, *T.* 32 *Geo.* 3. 4 *T. R.* 771. 1 *Bott*, 89. 1 *Nol. P. L.* 84. 165. It appeared that *S. White* was rated in the parish of *P.* for his personal property, which consisted of certain ships employed in carrying on the *Newfoundland* trade from the port of *P.* in the parish of *P.* The Court held that the ships were rateable in the parish of *P.*, which was their home.

(*a*) Sed vide *Rex* v. *The Trent and Mersey Canal Company*, post, 125.

Rex v. *Liverpool*, *H.* 38 *Geo.* 3. 8 *East*, 455. (n.) 1 *Nol. P.L.* 218,219. *W.H.* appealed against a rate wherein certain ships of his were rated. The appellant did not live in *Liverpool*: at the time of his being rated he held a warehouse and counting-house in *L.*, and was rated for the same: but no one slept therein. The ships in question were registered in *L.*, and in the register stated to belong to that port. The Court said that the sessions had found that the appellant was not an inhabitant of the parish of *L.*: but had not found that the ships rated were locally within the parish, but only within the *port*, which might not be co-extensive with the parish: and that it was only on one or other of those grounds on which the rate could be supported. Ld. *Kenyon* C. J., however, seemed to think that the appellant was not rateable under these circumstances; for that a person might be deemed an inhabitant for some purposes, and not for all. And he observed that the 43 *Eliz.* did not direct that personal property should be rated *eo nomine*, but the persons themselves, *inhabitants*, according to their ability, which can only be known in respect of personal property, which is of a fluctuating nature, by stating the account of debtor and creditor, and taking the surplus only as the criterion of that ability.

Ships belonging to a parish in which the owner is not an inhabitant.

Rex v. *Collison and Taylor*, *E.* 43 *Geo.* 3. 8 *East*, 455. (n.) 1 *Nol. P. L.* 167. 219. Upon a case reserved at sessions it appeared that the defendants did not reside at *Hull*, though they had a counting-house there. It was stated, that the defendants were owners of the ships, and that the ships were locally within the parish at the time of the rate, and were registered there; it was contended that this was the home of the ships, and that the personal presence of the owners was not necessary. The Court had great doubts upon the statement of the case, as well on the question of inhabitancy, which they seemed to think negatived by the case, as also upon the defect of the case in not showing that the owners derived any benefit from the ships within the parish of *Hull*. They seemed to be of opinion that the mere fact of being registered at *Hull* could not make them rateable there: vessels being sometimes rated in places not their proper home: and that it was not considered of any weight in *Rex* v. *Liverpool*. They observed also, that the case did not state that the ships in question terminated their voyage at *Hull*, or that the owners received any profit there: without showing which, they might, on the same ground, be rated at every place where they touched in the course of their voyage.

And in *Rex* v. *Howard*, *M.* 44 *Geo.* 3. 8 *East*, 455. (n.) the same question again came on, and it seemed that it was necessary to state that the ship was *locally within the parish* at the time of the rate.

And in a more recent case (*Rex* v. *Shepherd and others*, *M.* 58 *Geo.* 3. 1 *B.* & *A.* 109.) it has been expressly decided, that ships are liable to be rated in the parish, where they are locally and visibly domiciled, although out of it at the time of making the rate; but not where they have never been within the parish.

These cases were observed upon in the following case of *Rex* v. *Jones and others*, *T.* 47 *Geo.* 3. 8 *East*, 451. 1 *Nol. P. L.* 166. 217. This was an appeal against a poor-rate made for the parish of *Holyhead*, by which *Jones* was rated "*for his packet*,"

Packet-boats.

Packet-boats.

at a sum therein named. *Jones* resided at *Holyhead*, the packet-boat with its furniture was provided by *Jones* at his own expense, and he was commander of it; the government exercised no controul over the boat, excepting that it should be fit for the carriage of the mails. The boat was registered at *Beaumaris*, but was always considered by the seamen as belonging to *Holyhead*. *Jones* had from government a commission as commander of the packet. By the permission of government the packet conveyed passengers and luggage, which was the source of profit to the commander. The commander was subject to certain regulations made by government relating to the times of sailing, &c. The sessions confirmed the rate. In the course of the argument, *Lawrence* J. observed that the cases of *Rex* v. *Liverpool* and *Rex* v. *Collison* were defectively stated, and did not raise the general question. The stat. 43 *Eliz. c.* 2. imposes the rate upon *inhabitants and occupiers*, and the Court only decided there that a person *not inhabiting* within a parish was not rateable there, merely because he had a ship registered at the port, and lying there at the time: and so was to be understood what was said by *Le Blanc* J. upon the rateability of the proprietors of a mail coach for its profits. And the Court also stated that they could not consider these packets as being *pro tempore* the property of the crown, notwithstanding that the masters were subject to some degree of discipline and controul while in the service. — *Per* Lord *Ellenborough* C. J. This case cannot be distinguished from that of *The King* v. *White*, and under that authority these packet-boats must be held to be rateable. It is objected that they are not permanently local property in the parish of *H.*, and that no profit is made of them there. But the inchoate act, which is to earn the profit, begins there, and therefore there is a part performance, within the parish, of that which is to make the profit by the use of the property in question. The boats are laid up there; are repaired there; the owner dwells there; they yield profit there, for the passage-money from *Dublin* is actually earned there; and that of the voyage from *H.* to *D.* is at least begun to be earned at *H.*, that it yields some profit there cannot be doubted; and the owner resides in the same parish. This brings it completely within the *Poole* case. — *Lawrence* J. observed that it was not necessary for the purpose of making property rateable in any parish that it must be *permanent* there, and produce profit there. — The other judges agreed, and the rate was confirmed.

R. v. Nicholson. The lessee and occupier of an ancient and exclusive ferry, not being an *inhabitant resiant* within the township in which one of the *termini* of the ferry is situated, is not liable to be rated there for any share of

Rex v. *John Nicholson*, *E.* 50 *Geo.* 3. 12 *East*, 330. 1 *Nol. P. L.* 85. 88. 117. 212. *John Nicholson* appealed to the sessions against a rate made for the relief of the poor of the township of *Monkwearmouth-shore*, in the county of *Durham*, whereby, as lessee of an ancient ferry, from and between *Sunderland* near the sea, in that county, and *Monkwearmouth-shore*, he was rated for the tolls of the same. The sessions confirmed the rate, subject &c. Case: the appellant *Nicholson* is an inhabitant of and lives in *Sunderland*, which town lies close to the sea, at the mouth of the river *Wear*, which divides the parish of *Sunderland* from the township of *Monkwearmouth-shore*, on the north side of the river, maintaining each their own poor. There is an ancient ferry for horses, goods, and passengers, which crosses the river from *Sun-*

derland to *Monkwearmouth-shore*, and from *Monkwearmouth-shore* to *Sunderland*. This ferry, until 1795 belonging to the bishop of *Durham*, was then purchased by, and now belongs to, the commissioners of *Wearmouth* bridge; and the ferry and the tolls thereof are at present let on lease to the appellant at a yearly rent. Two large boats ply all the day to and from *Sunderland* and *Monkwearmouth-shore*, and the fare or toll paid for a person passing in the ferry is a halfpenny each way; and of late years for convenience it has been accustomed to collect the money of the passengers as they enter the boat on either side of the river, instead of when they go out, as done formerly; and one boat puts off from one side of the water when they see the other boat put off from the opposite side. There is a small boat also goes to and from *Sunderland* and *Monkwearmouth-shore* during the night; and the inhabitants of *Monkwearmouth-shore*, who are customed as after mentioned, pay the same toll or fare of a halfpenny as persons not customed do, if they go over in this night-boat. The respective boats, when not used, have always been locked up on the *Sunderland* side of the water, close to the place where the passengers get in on that side. Previous to 1710, upon a dispute between *Anthony Ettrick*, esq., the then lessee under the bishop, and Sir *Wm. Williamson*, bart., respecting the ferry-landings on his estate in the township of *Monkwearmouth-shore*, and the ferry-dues to be paid by his tenants in *Monkwearmouth-shore* for passing the ferry, it was referred to arbitration: and by award two places were set out by the arbitrators for the ferry-landings in *Monkwearmouth-shore*; and the one of them (called the High Landing) is the place where the ferry now lands, and has for a great many years past. And the ferry-dues to be paid by his lessees and tenants in *Monkwearmouth-shore* were also fixed by the arbitrators; namely, a cottage 2*s*. 6*d*. and a dwelling-house 5*s*. for one year's passage of the lessee's tenants or inhabitants of each cottage or house; and the ferry was to land thenceforth in no other place in *Monkwearmouth-shore* but the two places set out by the arbitrators. The ferry-dues so settled have been paid ever since to the occupier of the ferry for the time, and are reserved and confirmed to the same lessees, tenants, and inhabitants, in the act passed for the erection of *Wearmouth* bridge in 1792, and amount to from 80*l*. to 100*l*. a-year. The ferry has always, until the year 1802, when it was let to one *Thomas Wandless*, who lived in *Monkwearmouth-shore*, been let to persons living in *Sunderland*, and been rated to the poor of *Sunderland* for the whole of the tolls or ferry-dues: and it has at different times been also rated to the poor of *Monkwearmouth-shore*; but nothing was ever paid to that township until *Wandless* took the ferry, when the parish of *Sunderland* having raised his rate, in consequence of his having given an additional rent, he objected to pay, and appealed to the sessions at *Durham* in *July* 1805, but the case was abandoned by the respondents, and *Wandless*'s rate was amended, and reduced to half of the tolls of the ferry; and the ferry has since been continued to be rated to *Monkwearmouth-shore* for *one-half of the tolls or ferry-dues*, including one-half of the custom money, and for the other half thereof, including the remaining half of the custom money, to *Sunderland*. The number of passengers

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the tolls of such ferry; for supposing a ferry to be real property, it is not such real property as is mentioned in the stat. 43 El. c. 2. the occupancy of which subjects the party to the relief of the poor of the place.
And all the cases where parties have been held rateable in respect of the occupancy or receipt of tolls (apart from the question of inhabitancy) have been where they at the same time occupied real visible property connected with such tolls in the place where they were rated.

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from *Sunderland* to *Monkwearmouth-shore* are about the same as from *Monkwearmouth-shore* to *Sunderland*. The place where the ferry-lands in *Monkwearmouth-shore* is of little or no value of itself, in case it was not used in the ferry-landing. In this case it was admitted that the appellant was properly rated in the township of *Monkwearmouth-shore* as to quantum, in case he is rateable there at all for *any part of the tolls or fees* arising or received from or in respect of the ferry-boats. The sessions confirmed the rate.—The case having been argued;—Ld. *Ellenborough* C.J. (first stating that the case of *Williams* v. *Jones* was governed by this,) said, —The rate is here imposed on the *tolls* merely of the ferry: and the question is, whether the proprietor of the ferry, who is not an inhabitant of the township in which he is rated, be liable to be rated for such tolls received by him there? And this being a question upon the construction of the stat. 43 *Eliz. c.* 2. it is material to look to the words of it. By that statute the parish officers, by consent of two justices of peace, are directed to raise a competent sum for the relief of the poor by taxation of "every *inhabitant*, parson, vicar, and other, and of every *occupier* of lands, houses, tithes impropriate, propriations of tithes, coal-mines, or saleable underwoods in the said parish." Now *tolls* do not come within any one specification of occupancy described by the statute: they are not *lands*, nor houses, &c. If, therefore, the owner be taxable for them at all, it must be as an *inhabitant* of the parish out of which they arise: but there is no case in which the word *inhabitant* in that statute has been held to mean any other than a resident within the parish. In the cases which have occurred of rating in respect of personal property, such as *Rex* v. *Liverpool*, and *Rex* v. *Collison*, cited in *Rex* v. *Jones*, 8 *East*, 451, 455. (n.) 457. (n.) residence was considered necessary to constitute inhabitancy. But we are reminded of cases where *tolls* arising from navigable canals, to which the tolls of a ferry are assimilated, have been held rateable, without any reference to the question of inhabitancy: and the *Wickham* case is much relied on, where a corporation was held rateable for market-tolls: but they were the lords of the soil where the market was held, in respect of which they were rated for the tolls. In the case of *Rex* v. *Cardington*, the rate was specifically upon the sluices, on that which was local and visible property, and producing profit within the parish; and all the cases where tolls have been held to be rateable, when they are examined, will be found to have proceeded on that ground. It was so in the case of the *Staffordshire* and *Worcestershire* canal: the company were then rated for "their basins, towing-paths, and that part of their canal and the locks lying within *Lower Mitton*, and for the *tolls and duties arising therefrom* due at *Lower Mitton*." There could be no doubt that the *basins, towing-paths, canal and locks*, were local visible property there, and the *tolls and duties arising therefrom*, classed and connected as they are with the local visible property rated, were considered as resulting from that local and visible property. In all these cases the tolls have arisen from the use of the canal, which is local and visible, being part of the land itself, lying within the parish where the tolls have been rated. But there is no case where tolls

detached altogether from local real property have been held to be rateable *per se*. When, therefore, we are called upon to decide such a question for the first time, I am always disposed to go to the fountain-head, which is the act of the 43 *Eliz.*; and looking at the words of that act, I do not find any of them which extend to rate any person not being an inhabitant of the place, nor the occupier of any of the specific kinds of property mentioned in the act. And not finding any description in the statute which applies to the case of this appellant, I cannot hold him to be rateable for these tolls. — *Grose* J. of the same opinion. — *Le Blanc* J. The appellant is rated specifically as the lessee of the ferry for *half of the tolls or ferry-dues* in the township of *Monkwearmouth-shore;* and it is found he is an inhabitant of and lives in *Sunderland:* and it is not stated that he is the occupier of any property in *Monkwearmouth-shore:* and that brings it to the simple question, Whether a person residing out of the township be rateable there for the tolls of a ferry, which tolls arise and become due to him for carrying passengers and cattle from the one shore to the other, one of which lies in the township. The origin of his rateability, if it exist at all, must be sought for in the stat. 43 *Eliz.*, which does not extend in terms to this case. It is contended that he is an *inhabitant* of the township within the meaning of the act, and that he is also within it as an *occupier of real property*. Now when the word *inhabitant* is used as well as *occupier*, I must consider that by the former was meant a person who was *resident* in the place; for one might occupy without being resident, and the statute meant to include both: but this appellant is found to have been resident in *Sunderland*, and in that sense is not an inhabitant of *Monkwearmouth-shore*. Then, as to his occupation of real property in the latter township; if this ferry and the tolls be real property, still the appellant is not the occupier of such real property as is mentioned in stat. 43 *Eliz.* But they are compared to the tolls of a canal: but in all those cases the parties claiming the tolls for which they were rated had an interest in some local and visible property within the parish connected with their interest in the tolls. The case of the owner of the packet-boats, *Rex* v. *Jones*, 8 *East*, 451. comes very near to that of a person who has an exclusive right of carrying passengers and goods in a ferry boat; but the packet owner was only held to be rateable for his profits in the parish where he resided, and where the boats were kept, and produced the profit to him; and he was considered not to be rateable in any other place to which the boats sailed where he was not resident. The appellant, therefore, is not rateable for this property, either as an inhabitant or as an occupier. — *Bayley* J. This person is neither an inhabitant of the township within the meaning of the statute, nor an occupier of any of the species of property mentioned in it. In a statute which mentions *inhabitant* as well as *occupier*, inhabitant must mean *resident*, otherwise it would for this purpose mean the same as occupier. In all the cases of tolls it will be found that the persons rated were the occupiers of *lands* within the place, in respect of which the tolls in the whole or in part were payable. In *Rex* v. *Cardington* the sluice was real property. Canals are real property: they are land applied to a particular purpose, and the tolls are the profits arising from that use of the land, and are given

[Margin: R. v. Nicholson.]

[Margin: Inhabitant.]

to the proprietors as a compensation for the use of it in that manner. Here the appellant was not an inhabitant of *Monkwearmouth-shore*, and he was not an occupier there of any real property, for which he was rateable. Order of sessions quashed.

The owner of a ferry, residing in a different parish, but taking the profits of the ferry on the spot by his servants and agents, is not rateable for such tolls in the parish where they were so collected, and where one of the *termini* of the ferry was situated, and on which shore the ferry-boats were secured by means of a post in the ground; the soil itself at the landing-places being the king's common highway; and the owner of the ferry having no property in or exclusive possession of it.

Williams, Executrix, &c. v. *Jones and Hughes*, *E.* 50 *Geo.* 3. 12 *East*, 346. *Bott Cont.* 83. 1 *Nol. P.L.* 124. This case arose out of an action of trespass, the prior proceedings of which it is unnecessary to state. The case stated in substance; that *Hugh Williams* was the proprietor of *Porthaethwy* ferry, and of the tolls thereof; the same being an ancient ferry for the conveyance of persons, cattle and carriages, in boats across an arm of the sea, called the straits of *Menai*, or the river *Menai*, from the county of *Caernarvon* to the county of *Anglesey*, and *vice versâ*. The king's highway from *London* to *Holyhead* leads to and from the said arm of the sea, within the limits of the ferry. For many years there have been and now are five landing-places in the parish of *Llandysilio* in *Anglesey*, used by the ferry-boats on landing from the opposite shore; which landing-places have, within four years before the making of the rate in question, been repaired by *Williams*, the proprietor of the ferry: and for many years there hath been and now is a post fixed in the ground at one of the landing places, used for mooring the ferry-boats when on the *Anglesey* side. The said arm of the sea is navigable for all the king's subjects: and they have always a right of landing at the several landing-places at their pleasure: and the proprietor of the ferry never had the sole or exclusive use of the said landing-places, or either of them; but has the sole and exclusive right and privilege of conveying by his boats, persons, cattle, and carriages, for hire, from a part of the said king's highway lying in the parish of *Bangor*, in the county of *Carnarvon*, to another part of the said king's highway, lying in the parish of *Llandysilio* in *Anglesey*, and *vice versâ*. The ferry-boats have been worked and navigated by the proprietor's servants, hired and paid by the day; and the tolls and hire due for such conveyance from the county of *Carnarvon* to the county of *Anglesey* have been in fact paid to his servants for the use of the proprietor of the ferry, sometimes upon the said arm of the sea, a little before the arrival of the boats at the landing places, and sometimes in the boats in the landing-places, and at other times upon the landing-places in the parish of *Llandysilio*, after the persons paying the same have landed; and they have from time to time paid over the tolls and hire so received by them to his agent, residing in *Llandysilio;* which agent has never been rated, nor ever paid any poor's rates: and has, monthly, paid over such tolls, and hire, to another agent of *Hugh Williams* at *Beaumaris*, in *Anglesey*, out of the parish of *Llandysilio*, for the use of *H. Williams*. *H. Williams* never inhabited or dwelt in the parish of *Llandysilio*, and no proprietor of the ferry or tolls, or other persons in respect thereof, has at any time been rated for the same to the relief of the poor of the parish of *Llandysilio* before the making of the rate in question. That *H. Williams* was rated *for Porthaethwy ferry and the tolls thereof*, at the sum of 10*l.* 13*s.* The Court below gave judgment for the defendants; and the plaintiff below having in the mean time died, his executrix brought this writ of error.—This case was argued in the last term; and the general arguments urged as in *Rex* v. *Nicholson*.

Some additional observation was made in this case upon the circumstance of the post driven into the soil, to which the ferry-boats were sometimes made fast on the *Llandysilio* shore; but *the Court* considered that this did not essentially vary the present question; for the owner of the ferry was not found to have any property in the soil of the highway; and supposing that he had a right to make such a special use of the highway for the purpose of securing his ferry-boats, that did not make him the occupier of the highway; nor gave him any exclusive possession of it; nor could he maintain trespass for any injury done to the soil at the landing-places, which were common to all the king's subjects to land and pass upon. And now, after the judgment in the former case (*Rex* v. *Nicholson*) had been delivered, Ld. *Ellenborough* C. J. declared the opinion of the Court, that the decision of this case necessarily followed that of the other, the question in both being substantially the same; and therefore they reversed the judgment of the Court below. Judgment reversed.

Williams v. Jones and Hughes.

Rex v. *Thomas Milton, M.* 60 *G.* 3. 3 *B.* & *A.* 112. Upon an appeal against a rate made for the relief of the poor of the parish of *Bengworth*, within the borough of *Evesham*, in the county of *Worcester*, whereby one *Thomas Milton* was rated for "River tonnage at 100*l.* — 6*l.*" The sessions confirmed the rate, subject to the opinion of the Court of K. B. on the following case: — The appellant was a yearly tenant under *George Wigley Perrott*, esq. and *Jane Perrott*, widow, of that part of the navigation of the river *Avon* called the "Lower Navigation," which runs through the counties of *Worcester* and *Gloucester*, from the lock or sluice above the bridge at *Evesham* to the junction of the *Avon* with the *Severn* at *Tewkesbury*. The conveyance under which Mr. *Perrott*'s family held this property was dated the 17th *June*, 1760, and conveyed to them "all that the navigation and profits of navigation, and passage for boats, upon the *Avon*, situate in the counties of *Worcester*, *Warwick*, and *Gloucester*, to and from the *Severn*, up and down the *Avon*, unto and from the lock and sluice next above the bridge at *Evesham*; and also all storehouses, sluices, locks, &c. belonging to the river *Avon*, and the navigation thereupon to and from the *Severn*, up and down the *Avon*, unto and from the lock and sluice next above the bridge at *Evesham*, together with all the tolls, rates of tonnage, &c. to the navigation belonging." By an act passed the 24 *G.* 2. 1751, entitled, "An act for the better regulating the navigation of the river *Avon*, running through the counties of *Warwick*, *Worcester*, and *Gloucester*, and for ascertaining the rates of water-carriage," it was enacted, "that the said river *Avon* shall for ever thereafter be a free river, and all persons shall have liberty of passing and repassing up and down the said river with boats, barges, lighters, and other vessels laden with coal, or any other sort of goods, and shall have liberty to sell and vend the same to any persons, at such reasonable prices as they shall think fit and can get for the same; and to land the same, with the consent of the owners or occupiers of the land, at such wharfs as shall be thought most convenient, paying, or securing to be paid, to the owners and proprietors of the navigation, certain rates of tonnage for all goods and merchandises carried on the said river." The appellant was not an inhabitant or occupier of any messuage or tenement whatsoever in *Bengworth*, but resided

Where a river navigation extended through several parishes, and certain tonnage dues became payable in respect of goods carried along the line of navigation, and landed at a wharf locally situate within the parish of *B.* Held, that a rate on the proprietor of those dues for their whole amount in the parish of *B.*, stated to be for river tonnage, could not be considered as a rate upon that part of the river locally situate within the parish of *B.* but as a rate upon the parts of the river situate as well within as without the parish, and that it could not therefore be supported: Held, also, that stat. 41 G. 3. (U.K.) c. 23. § 1. does not give the court of K. B.

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the power of amending a poor-rate.

in the parish of *All Saints, Evesham,* on the opposite side of the river, which flowed between the two towns of *Bengworth* and *Evesham,* part of the river being within the parish of *Bengworth,* and other part of it being within the parish of *All Saints, Evesham,* both which parts were navigable, and used by vessels passing along the river. On the *Bengworth* side of the river, and within the parish, there was a wharf communicating with the river belonging to one *Day,* where goods were landed annually, yielding tonnage dues to the amount in the rate assessed; but no tonnage dues were received by the appellant in the parish of *Bengworth,* nor was any account given of them in that parish to the appellant; but, as a check upon the boatmen, an account was taken at the wharf, by *Day's* servant, of all the goods landed there, which was sent over to the appellant at his house, in the parish of *All Saints, Evesham,* where the boatmen accounted to him; and he usually received all the tonnage dues on goods brought up the river from *Pershore* to *Evesham,* and landed either in the parish of *All Saints, Evesham,* or in the parish of *Bengworth;* though, if he did not happen to be in the way when the boatmen called to give an account of and pay the tonnage dues at the office in *All Saints, Evesham,* they accounted for and paid them, on their return back, after unlading, at the appellant's office in *Pershore,* where he collected the tonnage dues from those who proceeded no further up the river than to *Pershore,* or any place above that; but, short of *Evesham,* there was no lock or sluice within the parish of *Bengworth,* and when the tonnage dues were paid at *Evesham,* the boatman took back with him a certificate from the appellant of his having paid the dues at *Evesham,* in order to enable him to repass the sluice through which he came up loaded, which was situate at *Pershore,* and which was kept locked. The same amount of tonnage was due and payable by every vessel which passed *Pershore* sluice in its way to *Evesham* or *Bengworth,* whether it proceeded as high as either of those places, or unloaded and delivered at any intermediate place, which was frequently the case, and which distance included eight different parishes where goods might be landed. *Peake,* in support of the order of sessions, cited the cases of *Rex* v. *Rebowe,* (1 *Bott,* 142. 2 *Cowp.* 583. *ante,* p.108.) *Rex* v. *Tynemouth,* (12 *East,* 46. *ante,* p.108.) *Rex* v. *Cardington,* (2 *Cowp.* 581. *ante,* 109.) *Rex* v. *Page,* (4 *T. R.* 543. *ante,* p. 83.) *Rex* v. *The Staffordshire Canal,* (3 *T. R.* 310.) *Rex* v. *Nicholson,* (12 *East,* 330. *ante,* p.116.) *Williams* v. *Jones,* (12 *East,* 346. *ante,* p.120. *Rex* v. *Eyre,* (12 *East,* 416.) and *Rex* v. *Sir Archibald Macdonald,* (12 *East.* 324. *ante,* p.106.) *Puller, contra,* was stopped by the court.—*Abbott* C. J. I am of opinion, that this rate, which has been made on the river tonnage, cannot be sustained. It has been contended, that by the words "river tonnage," we may understand the profits arising only from that part of the river which lies within the parish of *Bengworth.* It seems to me, however, that we cannot so understand those words, for they are explained to us by the subsequent facts stated in the case. From these facts, it clearly appears, that the profits accrued in respect, not only of the use of that part of the navigation which was within the parish of *Bengworth,* but also from the use of the other parts of the navigation, situate in the different parishes through which the goods had passed. This,

is, therefore, in substance, not a rate upon the profits of that part of the river only which is situated within the parish of *Bengworth*, but a rate upon the tonnage dues payable at the wharf there, in respect of the carriage of the goods through the other parishes. Unless, therefore, we are to supersede all the late cases by which it has been held, that tolls *per se* are not rateable, we are bound to say that these tonnage dues are not subject to this rate. The order of sessions must, therefore, be quashed.—*Bayley* J. Since the case of *The King* v. *Nicholson*, the Court have held themselves bound to see clearly, that the property rated comes within the words of the 43 *Eliz.* by which the rate is directed to be "by taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes impropriate, propriations of tithes, coal-mines, or saleable underwoods, in the parish." Now the party here, not being an inhabitant, must be brought within some of the other words, and the only other words applicable to this case are "occupier of lands." Now in *The King* v. *Tynemouth* it was decided, that the tolls of a light-house, situate in the parish of *Tynemouth*, but collected in the several ports at which the vessel, passing along the coast, afterwards arrived, were not rateable *quâ* tolls in the township, and the rate was held to be bad. In *The King* v. *Nicholson* the party was rated for the tolls of a ferry; he was not an inhabitant, nor did he occupy any lands or tenements, for he was not entitled to the land on either side of the river over which the ferry extended. The Court then considered the cases of *The King* v. *Cardington*, and *The King* v. *The Air and Calder Navigation*, 2 *T. R.* 660. The former case does not fall within the principle laid down in *The King* v. *Nicholson*: it was a rate for the toll of a sluice, and the party was the occupier of the sluice within the parish in which the rate was imposed. The sluice being landed property, the party was properly rated for the tolls yielded by the sluice within the parish. The cases of *Rex* v. *The Aire and Calder Navigation*, and *Rex* v. *Page*, certainly do not admit of that distinction. Those decisions, however, were expressly overruled by this court in the case to which I have alluded. In *Rex* v. *The Staffordshire Canal*, the company were rated "for their basins, towing-paths, and that part of their canal and locks lying within *Lower Mitton*, and for the tolls and duties *arising therefrom, due at Lower Mitton*; so that it appeared on the rate itself, that though it was nominally a rate upon tolls, yet it was on such tolls as arose from rateable property within the parish. In *The King* v. *Sir Archibald Macdonald*, the rate was for the *Rochdale Canal Lock Tunnel* dues or rates. Now if those dues or rates had arisen from property partly within the parish and partly without, it would have been like the present case. The only dues which the party was entitled to receive in that case where dues in respect of vessels passing through the lock, *which lock lay within the parish*; and, therefore, all the tolls and dues there arose from what may be called parish property. The rate in this case is for tonnage dues, and it would be a good rate, provided it could be shewn that the tonnage arose wholly from the use of rateable property within the parish. It is stated, however, that the canal passes through several parishes. The tolls, therefore, which are collected for goods landed at the wharf in the parish of *Bengworth*, are payable to the proprietor as a compensation for the use of the whole

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R. v. Milton. line of the canal through which the goods pass, and not merely for the use of that part of the canal which lies within the parish of *Bengworth*. It is a rate, therefore, upon profits arising partly within and partly without the parish; and, upon that ground, I think that the rate cannot be supported; and, if it cannot, the case of *Rex* v. *The Mayor of Bath*, 14 *East*, 609. is an authority to show that the rate must be quashed. In that case the rate was upon certain springs and reservoirs; and the question was, Whether the springs and reservoirs were rateable property: and the Court decided that they were; but the whole of the rate having been imposed on one parish, the Court were of opinion that it ought to have been imposed on different parishes, and that the parish in which the reservoir was situate ought to have been assessed for the value of that, and that the parishes through which the pipes conveying the water passed ought to have been assessed for the value of the profits arising therefrom. It seems to me, therefore, that this rate, having been imposed on property partly within and partly without the parish, is bad; and that it is not a mere objection to the *quantum* of the rate. — *Holroyd* J. It is now to be considered as an established rule, that tolls *qua* tolls are not rateable. I do not mean to say, however, that a rate may not be made on rateable property under the denomination of tolls, provided that property from which the tolls arise be within the parish, and the rate be confined to that property. Here the rate is upon tonnage dues. It is said that the property rated is rateable property within the parish where the tonnage dues became payable, and that, therefore, this is to be considered as a rate upon that rateable property. I think, however, that this is a rate, not only on rateable property within the parish, but on other property, which, though rateable, is rateable in another parish, and not in this. The case states, that within the parish there is a wharf, communicating with the river, where goods, to the amount assessed, are annually landed. It must be taken, therefore, that the rate was made upon *all* those tonnage dues. It is also stated, that part of the navigation lies in other parishes, in the passage through which the tonnage dues arise, as well as for the passage through the part of the river which lies within the parish. Now, if the rate on the tonnage dues be, in fact, a rate on the rateable property, that is, on the whole part of the navigation, in respect of which those dues are payable, it must be considered as a rate upon the profits arising, not only from that part of the navigation which is within the parish, but from that also which is not within the parish. The objection, therefore, is not merely to the quantum, but to the rate itself, viz. that it is a rate upon property without, as well as within the parish. I think, therefore, that this rate is bad, and that the order of sessions must be quashed. — *Best* J. It is now clearly established, that tolls *per se* are not rateable. The only mode by which the tolls of a canal become rateable is by rating the land itself, or that part of the land occupied by the canal, which is locally situate within the parish; the tolls then are the profits arising from that part of the land; and the statute of *Elizabeth* authorizes the rating of such property locally situate in the parish; but it does not authorize the rating of property not situate within the parish. I think that the rate here is upon property partly within and partly without the parish, and that it is, therefore, bad; and that, being so, I think the order

of sessions ought to be quashed.—*Peake* then applied to the court to amend the rate according to the provisions of 41 *G*.3. U.K.*c*.23. §1. But the Court thought that that act was confined to the quarter sessions; and that this court had no power given to them to amend a poor rate. They, therefore, quashed the order of sessions, but not the rate; leaving that to be amended by the sessions. Order of sessions quashed. R. v. Milton.

Rex v. *The Company of Proprietors of the Navigation from the Trent to the Mersey. E.* 4 *G*. 4. 1 *B.& C.* 545. *& MS.* The defendants having been rated to the relief of the poor of the township of *Findern*, in the county of *Derby*, the sessions on appeal confirmed the rate, subject to the opinion of the court of *K. B.* on the following case: — The appellants were incorporated by an act of 6 *G*. 3. by the name of "The Company of Proprietors of the Navigation from the *Trent* to the *Mersey*," and empowered to purchase lands to them and their successors and assigns, for the purpose of making a navigable cut or canal from the river *Trent* to the river *Mersey*. And it is by that act enacted, "That it shall be lawful for the said company to demand and take for their own proper use and behoof, for tonnage and wharfage, for all goods and commodities whatsoever, which shall be conveyed upon the said canal, such rates and duties as the said company shall think fit, not exceeding the sum of one penny halfpenny *per* mile for every ton of such goods and commodities which shall be conveyed upon the said canal, which said rates and duties shall be paid to such person or persons at such place or places near to the said cut or canal, in such manner and under such regulations as the said canal company shall direct or appoint." And it is further enacted, "That all persons whatever shall have free liberty to navigate with boats upon the said canal, under certain regulations, upon payment of such rates and duties as shall be demanded by the said company, not exceeding the rate thereinbefore mentioned." A part of the said canal being in length about one mile and fifty-two yards, comprizing the quantity of land for which the defendants were rated, passes through the said township of *Findern*. The company have no lands, houses, warehouses, wharfs, or other property in the said township, except the canal and towing path. No tolls, rates, or duties are received in the said township, nor do any tolls, rates, or duties become payable, the company not having so directed or appointed; but the company receive annually a much larger sum than that, in respect of which they are assessed, for tolls for the passage over that part of their canal which lies in the township of *Findern*. The canal company derive very considerable annual profits from the canal. By an assessment made on the ——— day of *October*, 1818, for the relief of the poor of the said township of *Findern*, and duly published, the defendants were rated in the following manner: —

A canal company are rateable to the relief of the poor in each and every parish through which their canal passes, as occupiers of land covered with water.

Proprietors.	Occupiers.	Names of Pieces.	Quantity.	Assessments.
Grand Trunk Canal.	Company.	Canal and Towing-paths.	7 a. 962 dec.	4*s*. 11½*d*.

R. v. The Trent and Mersey Canal Company.

Against this assessment the defendants appealed, upon the ground that they were not the occupiers of, nor have any rateable property in the township of *Findern.* The court of quarter sessions confirmed the rate, subject to the opinion of the court of K. B. upon the above case. — *Clarke,* on a former day, in support of the order of sessions, was stopped by the court, and *Scarlett* and *Reader* being then asked whether they could distinguish this case from those cases which had decided this principle, namely, that a canal is rateable to the relief of the poor in each and every parish or township through which it passes, according to the value of the land covered with water; and, having expressed confidence that they should be able to distinguish this from those authorities, and shew that at least this canal was not rateable in the township of *Findern,* they were desired to look into the cases, and if, upon consideration, they thought they could point out any sound distinction, they might mention the case again. — And now, on this day, they confessed their inability to distinguish this case, in principle, from *Rex* v. *Milton.* (3 *B.* & *A.* 112. *ante,* p. 12.) The company in the present case were certainly rated only as the occupiers of so many acres of land covered with water, and therefore they were not so much interested in resisting a rate founded upon that principle; but conceiving that this was only the commencement of a design to establish, first, that a canal company were rateable as occupiers of lands in the parish through which their canal passes, and then that they were rateable in the same parish in respect of their tolls also, though none were received there, they felt themselves called upon to oppose such an attempt. Underderstanding now, however, that the court decided no more than that the company were rateable merely as occupiers of lands in the township of *Findern,* and that the court did not recognize the principle to have been carried farther by *Rex* v. *Milton,* no further argument would be offered against the present rate. It was to be observed, however, as something remarkable, that this was the first time since canals had been established in this country, that any attempt had been made to rate them as so much land covered with water.

Per Curiam. Is not that the only correct mode of rating them, according to the language of the statute of 43 *Eliz. c.* 2., which imposes the rate upon "every occupier of lands." Unless they are rated in this form, they cannot be rated at all. The cases which have been decided, establish this principle, namely, that the occupier of lands in every parish, is liable to be rated in respect of the land which he occupies in each; and if a canal passes through several parishes, the undertakers are rateable in each and every parish through which the canal passes, according to the quantity of land occupied. The *Trent and Mersey Canal Company* occupy the land which the water covers in the township of *Findern,* and are rateable in respect of such occupation. Order of sessions confirmed. (*a*)

(*a*) See *Rex* v. *The Aire and Calder Navigation,* 2 *T. R.* 660. *Rex* v. *The Corporation of Bath,* 14 *East,* 609. *Rex* v. *The Calder and Hebble Navigation,* 1 *B.* & *A.* 263. *Rex* v. *Cardington, Cowp.* 581. *Rex* v. *The Grand Junction Canal,* 1 *B.* & *A.* 289. *Rex* v. *The Leeds and Liverpool Canal,* 5 *East,* 325.

The proprietors of an inland navigation are rateable to the relief of the poor in every parish through which the navigation passes, as occupiers of the land situate in each parish, used for the purpose of the navigation; and therefore, where the proprietors of such a navigation, which extended through different parishes, were rated in *one* for the *entire* amount of their tolls, the court of K. B. held that the rate could not be supported.

Rex v. *Susannah Palmer*, *E.* 4 *G.* 4. 2 *B.* & *C.* 546. By a rate or assessment made by the overseers, churchwardens, and others, of the parish of *Fornham All Saints*, for the relief of the poor, *Susannah Palmer* was charged in the sum of 1*l.* 0*s.* 10*d.* for a wharf and buildings situate in *Fornham All Saints*, adjoining the river *Lark*, and occupied and used for the purposes of navigation of the said river, *and the towing paths, locks, sluices, and other works* within the parish of *Fornham All Saints*, also occupied and used for that purpose, and the tolls arising therefrom due at *Fornham All Saints*, rated at 250*l.* Upon appeal the sessions confirmed the rate, subject to the opinion of this court on the following case:

By an act 11 & 12 *W.* 3. *s.* 1., *H. Ashley*, esq., his heirs and assigns, were empowered to make navigable the river *Lark*, alias *Burn*, from a place called *Long Common*, a little below *Mildenhall* mill, to *Bury Saint Edmunds*; and after making satisfaction to the land owner, *Ashley* was to have and enjoy the cuts, water-courses, towing paths, &c. in as ample and beneficial a manner as if the same by good title and sufficient conveyance in the law had been absolutely sold and conveyed to him, his heirs, and assigns. By another section, *Ashley*, his heirs and assigns, were empowered to demand and receive for the freight of goods up the river from *Mildenhall* mill to *Bury*, or down the river from *Bury* to *Mildenhall* mill, at such place adjoining the river, as he, his heirs, or assigns should think fit, certain tolls or rates therein mentioned, and a proportionate rate or toll for any less distance. Mr. *Ashley* the original undertaker, from whom the defendant derives her title, made the river navigable from *Mildenhall* to *Fornham All Saints*, a distance of twelve miles and a-half. But it was never made navigable as far as *Bury*, nor beyond *Fornham All Saints* and *Fornham Saint Martin*. Half the channel (to the centre thereof) being in the former, and half in the latter parish, but the towing path and the half of one sluice and two locks are in *Fornham All Saints*, the remaining half of the same sluice and locks being in *Fornham Saint Martin*. The towing path is separated from the adjoining lands by a ditch. The appellant is not an inhabitant of *Fornham All Saints*, but resides in *Bury*. She is the owner under a distinct title of a wharf or coal-yard, of about four acres, lying in the former parish, and adjoining to and situate at the extremity of the navigation, in which said wharf are several warehouses and other buildings; different portions of this wharf or coal-yard are from time to time allotted by the agent of the appellant to the principal coal merchants who use this navigation, to the number 14 or 15. They pay no rent for these portions,. but keep the division fences of their respective portions in repair. These different portions are varied from time to time by the agent of the appellant. Large quantities of coals are carted at once from the boats, and not deposited in the coal-yard; but it is necessary for the accommodation of the wholesale dealers

Rex v. *Macdonald*, 12 *East*, 324. *Rex* v. *The Mayor of London*, 4 *T. R.* 21. *Rex* v. *Milton*, 3 *B.* & *A.* 112. *Rex* v. *The New River Company*, 1 *M.* & *S.* 503. *Rex* v. *Nicholson*, 12 *East*, 330. *Rex* v. *Page*, 4 *T. R.* 543. *Rex* v. *The Rochdale Water Works Company*, 1 *M* & *S.* 634. *Rex* v. *Sculcoates*, 12 *East*, 330., and *Rex* v. *The Staffordshire and Worcestershire Canal*, 8 *T. R.* 340.

R. v. Palmer.

using the navigation, that they should have a place whereon to deposit their goods, but the appellant is not bound to provide such place The buildings and the outer fences and walls inclosing the wharf and the towing paths, locks, and sluices, are repaired by the appellant, and were erected by her or her ancestors. Up to the year 1816, the appellant was rated on a rental of 17*l.* for the coal-yard, and no rate was imposed upon the profits of the navigation. The annual value of the coal-yard as mere land, is not above 3*l.* Since the year 1816, to the making of the assessment appealed against, she has been rated in the parish of *Fornham All Saints,*" "for tolls arising from the navigation and warehouses," at 250*l.* per annum. The tolls becoming due, and received by the appellant for goods landed in the parish of *Fornham All Saints,* equal the amount of the assessment. — In support of the rate, the cases of *Rex* v. *The Aire and Calder Navigation,* 2 *T. R.* 660. *Rex* v. *Page,* 4 *T. R.* 543. *Rex* v. *The Proprietors of the Staffordshire and Worcestershire Canal,* 8 *T. R.* 340. were cited. — *Abbott* C. J. I entertain the greatest reverence for the opinion of the learned judges who decided those cases. It must be recollected, however, that when those cases came before the court, it had not been decided that tolls *per se* were not rateable. This is now fully established by the case of *Rex* v. *Nicholson,* 12 *East,* 330. The proprietors of a navigation are, therefore, rateable only as the occupiers of the land, or land covered with water, for their tolls, as profits arising out of that land so used. They are rateable, therefore, in every parish through which the canal passes, in respect of the land there situate, and so used for the canal. The true principle of rateability is this: the land is to be rated to the relief of the poor in the parish where it is productive of profit to the proprietor, and in proportion to that profit, which may be considered as in the nature of a rent received by the proprietor for the use of his land within the parish. This is very different from the case of a sluice. In that case the tolls become due for the use of a sluice itself, and the proprietor must contribute to the relief of the poor in that parish where the sluice is situate. The proprietor of a navigation is to contribute in respect of the profits of land, extending probably through many parishes; and he is to pay to each of those parishes in respect of his land locally situate within it. Here, the whole land occupied by the canal contributes to produce the entire amount of the tolls, and the proprietor of the navigation ought not to have been assessed at that amount in any one of the parishes through which the canal passes. The rate, therefore, cannot be supported, and the order of sessions must be quashed.—Order of sessions quashed.

The proprietors of a navigation extending through several parishes are to be rated in an intermediate parish, not in respect of the riverage becoming due in that parish for goods landed there,

Rex v. *The Earl of Portmore and another,* 2 *B. & C.* 551. Defendants were rated, as proprietors of the river *Wey,* at 32*l.* 10*s.* 0*d.*, being at the rate of 2*s.* in the pound, upon the supposed amount of the tolls earned within the parish. By an act of 22 & 23 *Car.* 2. "for settling and preserving the navigation of the river *Wey,* in the county of *Surrey,*" the soil of the river and of the banks, &c., and the locks, &c., were vested in certain persons in the said act specified, to be used and navigated by them only, their heirs and assigns, and their agents and servants, and not by any other person or persons, boat or boats, barge or vessel whatsoever, without their leave and licence. The defendants are the

present proprietors of the said river and navigation, and liable as such to be rated in respect thereof. — They are not themselves carriers upon the said river, nor the owners of any vessels navigated thereon; but every vessel navigated thereon is so navigated by their leave and licence, which is uniformly granted, subject to the provisions of certain rules made in pursuance of the act of parliament. By these rules the persons licensed to navigate any vessel upon the river, are required to pay to the receivers appointed by the proprietors of the navigation, a certain riverage for every ton of goods navigated on the same. — The navigation extends from *Guildford* in *Surrey* to the river *Thames*, through several parishes, and among others the parish of *Woking*, and many tons of goods annually pass through that parish, to and fro, in vessels using the navigation to different places of destination; but the goods annually landed within the parish do not yield riverage to the amount in respect of which the defendants are assessed. The question for the opinion of the court was, whether the proprietors of the navigation were rateable, except upon the amount of the riverage arising from the goods landed within the parish. If they were not rateable beyond that amount, then the rate is to be amended, by reducing it to *l.*; otherwise to stand at its present amount. *Monro*, against the order of sessions, being called upon by the Court, stated that he was prepared to have argued that the proprietors ought to have been assessed only in respect of the amount of the riverage arising from goods landed within this parish, on the ground that they could only be rated for their tolls at the places where they became due; and he referred to the opinion of Ld. *Ellenborough* in *Rex* v. *Sculcoates*, 12 *East*, 45. *ante*, p. 113. and the other authorities cited in *Rex* v. *Palmer*. He admitted, however, that, according to the principle laid down in the preceding case, the proprietors were liable to be rated in *Woking* in respect of the profits of their land, situate within that parish; and if so, that the riverage payable on goods landed there would not be the correct measure of those profits. — Order of sessions confirmed. (*a*)

R. v. Lord Portmore.

but in respect of the profits of the land used for the navigation situate within the parish.

6. Of the Proportion in which the Rate shall be made.

In *Rex* v. *Brograve*, *M.* 10 *Geo.* 3. 4 *Burr.* 2491. 1 *Bott*, 112. 1 *Nol. P. L.* 221. 237. it was moved to set aside an

The court will not presume a

(*a*) The ground on which all the earlier cases respecting the rateability of canal tolls proceed is this, that the rate is laid upon the tolls themselves; that they cannot be rated till they have an actual existence, or, in other words, till they are actually earned; and that they are not earned till the voyage is completed in respect of which they are payable. When once it was decided that the tolls themselves were not the subject of the rate, the whole of this reasoning became inapplicable; and the only question was, whether the land out of which the tolls arose was rateable; and no reason has ever been assigned for the contrary, except the difficulty of imposing a just assessment. (See 4 *T. R.* 26. 547., and 8 *T. R.* 349.) There seems indeed no satisfactory reason for holding, that land, which by being applied to a particular purpose, produces a greater profit than it would have done if employed in the ordinary manner, should not be rateable in respect of such profit, whilst a house is rateable for the additional value arising from the circumstance of its containing a billiard table or a machine. *Rex* v. *St. Nicholas, Gloucester, Cald.* 262. *Rex* v. *Hogg*, Ib. 266.: or from certain privileges attached to it, as that of selling liquor therein. *Rex* v. *Bradford*, 4 *M.* & *S.* 317., which are profits at least as extrinsic of the house as the tolls are of the land. See *ante*, p. 99, 100.

rate unequal although houses and lands are not rated alike.

order of sessions confirming a rate in which houses and lands were rated differently. But by the Court: Here is no apparent inequality, and we are not to presume it. There may be reason to make a difference between lands and houses. For there are several charges incident to houses which do not fall upon lands, to lessen their yearly value.

Unless a rate be manifestly unequal, the court will presume it equal.

Rex v. *Butler & al., E.* 20 *Geo.* 3. *Cald.* 93. 1 *Bott,* 114. 1 *Nol. P.L.* 238. It was objected against a rate made by the parish officers of *Swannage* alias *Sandwich,* and confirmed by the sessions, that no difference was made in assessing tenements and farms consisting of land, and cottages or dwelling-houses; whereas the clear income of the former was at 1*d.* in the pound, to three farthings in the pound of the latter; and that it had been the custom to rate them nearly in that proportion until the year 1778, when, at a public vestry, both lands and houses were rated at 1*d.* in the pound, and the same way of rating hath since continued. By Ld. *Mansfield* C. J.: The question before the Court is, does the rate upon the face of it appear to be equal or unequal? Unless it is manifestly unequal, the Court will presume it equal. Circumstances may vary the value of different estates; and if this plainly appear, then what is said in *Rex* v. *Brograve* applies: but you take advantage of an *obiter* saying of the Court in that case, when the true legal ground of the authority is decisive against you. Rate affirmed.

The court of K. B. can lay down no general rule for the proportion to be observed in rating.

Rex v. *Sandwich* alias *Swannage, H.* 21 *Geo.* 3. *Cald.* 105. 1 *Bott,* 115. 1 *Nol. P. L.* 236. 238. A poor rate was made charging tenements and farms at 1*d.* in the pound, and cottages and dwelling-houses at three farthings in the pound. The sessions on appeal quash the rate and state the following case: that from the year 1735 to the year 1776 a constant distinction had been observed; houses having been rated at a less proportion to their rents than the lands were; that in this parish the lands were burthened with no particular charges, but both were equally subject to the usual repairs and taxes generally incident to each respectively. In support of the rate; it was urged that it had been made in consequence of what seemed to be the opinion of the Court in the last case. And also, that the rate ought not to have been altogether quashed, but amended by adding to the sums assessed upon the houses. It was answered, that in this parish nine-tenths of the burthen of the poor arose from the houses; and that the rate could not be amended, as the objection went to every name in the rate.—By Ld. *Mansfield* C. J.: the Court has certainly laid down no general rule as to the mode of assessing houses and lands. They could not either one way or the other. The proportion must ever depend upon local circumstances; and, if nine-tenths of the burthen arise from the houses, such circumstances were sufficient to influence the sessions in adjusting that proportion. The objection unavoidably goes to the whole rate, for it is throughout made by a rule and proportion which the justices thought unequal, and therefore they could do nothing but quash the whole.

A person must be rated according to the improved value of his property.

And in *Rex* v. *T. Mast, H.* 35 *Geo.* 3. 6 *T.R.* 154. 1 *Bott,* 211. 1 *Nol. P.L.* 200. 224, 225. which was upon the appeal of *T. Mast* against a poor rate for the parish of *St. Neot's,* in which the appellant was rated at the full annual value of his estate at

that time; and *W. Fowler* was rated at 29*l. per ann.* but the real annual value in consequence of improvements was 175*l.*; he occupied, besides, other lands and property in the parish, for which he was rated after the same manner. There was also one *Gorham* who was rated in the same way. This rate upon appeal was confirmed at the *Huntingdon* sessions. — Ld. *Kenyon* C. J.: The assessment for the relief of the poor should be so contrived, that each inhabitant should contribute in proportion to his ability, which is to be ascertained by his possessions in the parish. Every inhabitant ought to be rated according to the present value of his estate, whether it continue of the same value as when he purchased it, or whether the estate be rendered more valuable by the improvements which he has made upon it. If a person chuse to keep his property in money, and the fact of his possessing it be clearly proved, he is rateable for that: but if he prefer using it in the amelioration of an estate or other property, he is rateable for the same in another shape. In whatever way the owner makes his estate more valuable, he is liable to contribute to the relief of the poor in proportion to that improved estate; and whatever be the proportion of rating in a parish, whether to the full value or otherwise, the rate must be equally made on all persons; there cannot be one medium of rating for one class of persons, and another for another class. Now here it appears (*a*) that the appellant was rated at the full annual value of every thing that he possessed, while other inhabitants were not rated at a third of their estates. With regard to the discretion of the justices; if indeed they had confirmed this rate generally, without disclosing to us the grounds on which they proceeded, we could not have quashed the rate, because the inequality does not appear upon the face of it: but they have disclosed those grounds: and, on the case as stated, it is impossible not to say that they have made a mistake. This rate appears so defective throughout, that it cannot be amended. — *Ashhurst* and *Grose* Js. of the same opinion. Order of sessions quashed.

Rent not a certain criterion of value.

Also in *Rex* v. *Skingle*, *E.* 38 *Geo.* 3. 7 *T. R.* 549. 1 *Bott*, 218. 1 *Nol. P. L.* 225. on an appeal against a poor rate, the ground of the appeal was, that *William Hill* and *John Bull* were under-rated, the lands in their occupation being now of a greater annual value than the rent reserved by the lease, and the rate was made according to the rent: but the Court were of opinion that the case was too clear for argument, and that the rate ought to be regulated according to the improved value.

Rate regulated by improved value.

Land tax no rule for the poor rate.

Rex v. *Clerkenwell*, *H.* 2 *Geo.* 1. *Fol.* 12. 1 *Bott*, 111. 1 *Nol. P. L* 220. An order was quashed which was made to confirm a poor rate, which rate was made according to the *land-tax*. Objected, that this taxation was not equal, because the personal estate in the public funds is not chargeable to the land-tax, but it is to the poor: and by the whole court this rate for that reason was set aside.

17 G. 2. c. 38.

Clause concerning persons re-

By stat. 17 *Geo.* 2. *c.* 38. § 12. After reciting, that *whereas persons frequently remove out of parishes and places without paying the rates assessed on them, and other persons do enter and occupy*

(*a*) The particulars were fully stated.

17 G. 2. c. 38.

moving out of parishes.

their houses and tenements part of the year, by reason whereof great sums are annually lost to such parishes and places; it is enacted, that where any person or persons shall come into, or occupy any house, land, tenement, or hereditament, or other premises, out of or from which any other person assessed shall be removed, or which at the time of making such rate was empty or unoccupied, then every person so removing from, and every person so coming into or occupying the same, shall be liable to pay to such rate in proportion to the time that such person occupied the same respectively, in the same manner, and under the like penalty of distress, as if such person so removing had not removed, or such person so coming in or occupying, had been originally rated and assessed in such rate; which said proportion, in case of dispute, shall be ascertained by any two or more of H. M.'s justices of the peace,

7. Of Allowance by the Justices; and Publication of the Rate.

The requisites, pointed out by the principles of the several preceding cases, as being necessary to give validity to a poor rate, having been observed, the last circumstance, which remains to be considered, and which renders the rate operative, is the allowance by the justices: respecting which allowance the following cases have occurred, and statutes been passed.

The Form of the Rate may be to the following Effect:

Form of the rate.

AN assessment for the necessary relief of the poor, and for the other purposes in the several acts of parliament mentioned relating to the poor, for the parish of ———, in the county of ———, made and assessed the ——— day of ——— being the first rate at sixpence in the pound for the present year ——.

Names of Occupiers.	Description of the Premises they hold.	Annual Value.			Sums assessed sixpence the Pound.		
		£.	s.	d.	£.	s.	d.
A. B.	A house and garden.	5	—	—	—	2	6
C. D.	A farm-house, lands, and buildings.	100	—	—	2	10	—
E. F.	A warehouse.	20	—	—	—	10	—
And so forth.							

Assessors, A. B. } Churchwardens.
C. D.
E. F. } Overseers of the poor.
G. H.

By stat. 43 *El. c.* 2. § 1. the said rate and taxation shall be made *with the consent of two justices, one whereof is of the* quorum, *dwelling in or near the parish or division.*

43 El. c. 2. Allowance of the rate by the justices.

And this consent is usually given by the justices signing the same, with their allowance thereupon thus:

WE, two of H. M.'s justices of the peace in and for the said county, one whereof is of the quorum, *do consent unto and allow of this assessment: witness our hands the —— day of ——, 18—.*

J. P.
K. P.

But this consent is to be understood of two justices out of sessions; for the sessions have no original power to order an assessment to be made, but only if it come before them by way of appeal; for in such case the party would be deprived of the benefit of appealing. 2 *Ld. Raym.* 798.

The sessions have no original power to order an assessment.

And if the justices refuse to sign and allow the rate, the court of king's bench will grant a *mandamus* to compel them.

Rex v. *The Justices of Dorchester, M.* 7 *Geo.* 1. 1 *Stra.* 393. 1 *Bott*, 77. 1 *Nol. P. L.* 63. A *mandamus* issued to the justices to sign a poor rate made by the churchwardens and overseers. Before the return, a motion was made to supersede it for several objections to the fairness of the rate; and that this would be speedier and better for the poor, than to reserve the debate of them for a formal return. — But by the Court: The two justices are necessary to sign the rate only by way of form; for it is the churchwardens and overseers that have the power of making it: and whether it be a fair rate or not, is proper for the jurisdiction of the sessions, and was never intended for our examination. — The *supersedeas* being denied, the justices returned, that they could not allow the rate, it not being a just and proper rate; and the Court having before given their opinion of this upon the motion, they resented this usage so far that they quashed the return, and ordered an attachment against the justices, who thereupon submitted, and returned that they had allowed the rate.

The justices cannot refuse signing a poor rate.

Rex v. *Uttoxeter, E.* 5 *Geo.* 1. 1 *Bott*, 77. 1 *Nol. P.L.* 63. The allowance of the poor's rate by two justices is merely a ministerial act.

The allowance of a rate is a ministerial act.

The same point was determined in the case of *Rex* v. *Kynaston.* 1 *East*, 117. 2 *Bott*, 680. 1 *Nol. P. L.* 63.

Stat. 43 *Eliz. c.* 2. § 8. Enacts, that the mayors, bailiffs, or other head officers of every town and place corporate and city, being justice or justices of peace, shall have the same authority within their jurisdiction, as well out of, as at their sessions, if they hold any, as is herein limited, to justices of the county, or any two or more of them, or to the justices of peace in their quarter-sessions, and no other justice or justices shall enter or meddle there; and that every alderman of *London* within his ward may do so much as is allowed by this act to be done and executed by one or two justices of peace of any county.

43 El. c. 2. Officers of corporate towns have the authority of justices of peace.

Aldermen of London.

§ 9. Enacts, that if a parish extend into more counties than one, or part lie within the liberties of any place corporate, and part without, the justices of every county, and the head officers of such place corporate shall intermeddle only within their liberties,

A parish extending into two counties or into two liberties.

43 El. c. 2.

and every of them respectively within their several jurisdictions, shall execute the ordinances before-mentioned concerning the nomination of overseers, the consent to binding apprentices, the giving warrant to levy taxation unpaid, the taking account of churchwardens and overseers, and the committing to prison such as refuse to account or deny to pay the arrearages due upon their accounts; and yet nevertheless, the said churchwardens and overseers, or the most part of them, of the said parishes that do extend into such several limits and jurisdictions, shall, without dividing themselves, duly execute their office in all places within the said parish, in all things to them belonging.

Rate not to be altered.

After a rate has been allowed, it should not be altered by inserting additional names, although with the magistrates' approbation. *Rex* v. *Barret*, 2 *Doug.* 465.

Rate for a borough not to be confirmed by justices of a county.

In *Rex* v. *Folly*, *T.* 27 & 28 *G.* 2. 1 *Bott*, 78. 1 *Nol. P. L.* 64. It was decided, that a rate for a borough cannot be made by the overseers appointed by the justices of the county, nor be allowed by the justices of a county.

But in *Rex* v. *Gordon*, *E.* 58 *Geo.* 3. 1 *B. & A.* 524. where a parish contained within itself a borough not co-extensive with it, and the mayor of the borough, on a return to a *mandamus* for allowing a poor rate made by the churchwardens and overseers of the whole parish, stated a custom which had existed since stat. 43 *Eliz. c.* 2. of appointing separate churchwardens and overseers, and of making separate rates for the borough and for those parts of the parish which lay without the borough; it was holden that such custom was invalid, and the return was quashed accordingly. —Lord *Ellenborough* C. J. said the 9th section of the 43d of *Eliz.* specifies and enumerates many acts that may be done separately, where a parish is partly within a town corporate, and partly without; but it does not mention the act of making rates. Now this of itself affords a very strong presumption that the legislature contemplated the making of one entire rate for the parish; and besides, that section, after directing in what way the church-wardens and overseers are to be appointed, enacts expressly that they shall, without dividing themselves, execute their office in all places within the said parish. That shews distinctly that one rate only for the whole parish must be made, and prohibits the making of separate rates by the separate bodies of churchwardens and overseers as has been, according to the custom stated in this return, done within this borough.

59 G. 3. c. 95. **Separation of towns from parishes and distinct appointment of overseers lawful.**

Stat. 59 *Geo.* 3. *c.* 95. After reciting in its preamble that various towns corporate and franchises, situate within one or more parishes, and not co-extensive therewith, have long been separately assessed from the parish or parishes in which they are situate, and distinct overseers have been appointed for them, which, in many cases, has been made without authority, and yet the re-union could not be without manifest inconvenience and hardship, *enacts* that henceforth all such separation of towns corporate or franchises from the parish or parishes in which they are situate, together with the separate and distinct appointment of overseers of the poor shall be deemed lawful in the same manner as if the said separation or division had taken place under the authority of the act of the 43 *Eliz.* Provided that nothing in this act shall confirm any separation in respect to maintenance of the poor or ap-

43 El. c. 2. **But with respect to the poor, such separation must not have com-**

pointment of overseers in any case where it shall appear that such separation has commenced within sixty years before the passing of this act. menced within sixty years.

Rex v. *Edwards* and *Symonds*, *T.* 7 *Geo.* 3. 1 *Blac. Rep.* 637. 1 *Bott*, 78. 1 *Nol. P. L.* 63. The defendants were justices of the peace for *St. Ives* in *Cornwall*, and had evaded the signing of a poor rate in obedience to a writ of *mandamus*, by keeping out of the way so as not to be served with the writ; and an attachment was granted for the contempt. Attachment for evading the signing of a poor rate according to mandamus.

By stat. 17 *Geo.* 2. *c.* 3. § 1. The churchwardens and overseers or other persons authorized to take care of the poor, shall cause public notice to be given in the church of every rate for relief of the poor allowed by the justices, the next *Sunday* after such allowance; and no rate shall be reputed sufficient so as to collect the same, unless such notice shall have been given. 17 G. 2. c. 3. Publication.

The next Sunday *after such allowance.*] In *Rex* v. *Newcomb* and another, *T.* 31 *Geo.* 3. 4 *T. R.* 368. 1 *Bott.* 78. 1 *Nol. P. L.* 64. 256. It was determined, that if a poor rate be not published in the church on the next *Sunday* after it hath been allowed by the justices, it is a nullity, and payment under it cannot be enforced, although not appealed against at the sessions. And Ld. *Kenyon* C. J. said it was a radical defect in the rate itself, which nothing could cure.

By stat. 17 *G.* 2. *c.* 3. § 2. it is enacted, "that the churchwardens and overseers of the poor, or other persons authorised as aforesaid in every parish, township, or place, shall permit all and every the inhabitants of the said parish, township, or place, to inspect every such rate at all seasonable times, paying one shilling for the same, and shall upon demand forthwith give copies of the same or any part thereof, to any inhabitant of the said parish, township, or place, paying at the rate of sixpence for every twenty four names." 17 G. 2. c. 3. Inspecting the rate.

By § 3. it is enacted, "that if any churchwarden or overseer of the poor, or other person authorised as aforesaid, shall not permit any inhabitant or parishioner to inspect the said rates, or shall refuse or neglect to give copies thereof as aforesaid, such churchwarden or overseer, or other person authorised as aforesaid, for every such offence shall forfeit and pay to the party aggrieved the sum of twenty pounds, to be sued for and recovered by action of debt, bill, plaint, or information, in any of H. M.'s courts of record wherein no essoin, protection, or wager of law, or more than one imparlance shall be allowed."

Spencely v. *Robinson*, *H.* 1825. *MSS.* of *B.* & *C.* Debt on stat. 17 *G.* 2. *c.* 3. § 2. Declaration stated that plaintiff was an inhabitant of the township of *Coxwell*, in the North Riding of the county of *York*, and that the defendant was one of the overseers of the poor of that township; that on the 26th of *March*, 1824, the churchwardens and overseers of the poor of that township made a rate for the relief of the poor, which was afterwards duly allowed by two justices, and that the churchwardens and overseers after the allowance of the rate, gave public notice in the church of that rate having been allowed; the declaration then stated that the plaintiff requested the defendant as such overseer to permit him, the plaintiff, to inspect the rate, and tendered to him one shilling for the same, yet that the defendant neglected and refused to

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permit the plaintiff to inspect the rate, contrary to the form of the statute, &c., whereby defendant forfeited 20*l*. The second count stated that the plaintiff at a reasonable time, to wit, on &c., at &c., demanded of the defendant, so being such overseer, a copy of the rate, and was ready, and offered to pay to the defendant at and after the rate of 6*d*. for every 24 names thereof, yet that the defendant refused to give him the copy.—At the trial before *Bayley* J., at the summer assizes for the county of *York*, 1824, the following appeared to be the facts of the case. The plaintiff was an inhabitant of the township of *Coxwell*, and the defendant was overseer of that parish. The rate in question was made on the 26th of *March*, allowed on the 27th, and published on the 28th. About 8 o'clock of the 19th of *April* the plaintiff sent his son to the defendant to request that he would come to him at his (plaintiff's) house. The defendant went and saw the plaintiff and his attorney; the plaintiff asked the defendant to allow him to inspect the rate, and tendered him one shilling on that account. The defendant said that he durst not allow it; he was ordered not to do it. The plaintiff's attorney then asked him for a copy of the rate. The defendant then went away and related what had taken place to the Rev. Mr. *Newton*, a magistrate, and stated that he had not shewn the rate, because he was informed that he was not obliged to shew it. Mr. *Newton* told him that he was, and pointed out the clause in the act of parliament, and advised him to go back immediately and shew the plaintiff the rate, and take a copy of it next morning as early as possible to the attorney. The defendant did return to the plaintiff's house in about two hours after the inspection of the rate had been demanded, and offered to shew him the rate, and the defendant made out a copy that night and delivered it to the plaintiff's attorney early the following morning. The latter said that it was too late, for the plaintiff could not appeal to the next sessions. The defendant said that he would waive all objection to the notice. The defendant on the 17th of *April* met the plaintiff's attorney in *Embing* market, which is about eight miles from *Coxwell*, and he then asked him if he had a copy of the rate, for he was employed by the plaintiff and wished to see one. The defendant said that he should have one if he was entitled to it, and the attorney replied that he should be at *Coxwell* on *Monday* and should expect to have one. Upon this evidence the learned judge told the jury that although there was a refusal at one time to permit an inspection of the rate, the question was whether that refusal was not done away with by what subsequently took place. The defendant within two hours after the refusal having offered to allow the plaintiff to inspect the rate, and having delivered a copy to the plaintiff's attorney early next morning, a party was bound to give an overseer a reasonable time to do what the law required. The learned judge then told the jury that if they thought that the defendant had complied with the demand in a reasonable time the defendant was entitled to a verdict. The jury found a verdict for the defendant.—A rule *nisi* was obtained for a new trial in *Michaelmas* term, upon the ground that this verdict was against evidence, and also upon the ground that the learned judge misdirected the jury, inasmuch as permission to inspect the rate having been once refused, a right of action

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vested in the plaintiff. — On showing cause it was argued against the rule on the words of stat. 17 *G.* 2. *c.* 3. § 2. *ante,* p. 135. that churchwardens and overseers of the poor shall permit all and every the inhabitants of the parish, township, or place, to inspect every such rate, at all seasonable times, paying one shilling for the same, and shall upon demand forthwith give copies of the same or any part thereof to any inhabitant of the said parish, township, or place, paying at the rate of six-pence for every twenty-four names. The 3d section enacts, that if any churchwarden or overseer shall not permit any inhabitant or parishioner to inspect the rate, or shall refuse, or neglect to give copies thereof as aforesaid, the churchwarden or overseer, for every such offence, shall forfeit and pay to the party aggrieved the sum of 20*l.* The statute enacts two offences, the one in not permitting the inhabitant to inspect the rate, the other in refusing to give copies thereof. The refusal to permit implies a previous request, and it must be made at a reasonable time, and a reasonable place. Now an overseer cannot be expected to carry the rate book with him, and therefore the request to see the rate should have been made at the house of the overseer. Here it was made at the plaintiff's, where the defendant had not and could not be expected to have the rate book with him. Then as to the demand of the copy of the rate, there was no legal demand until the evening of the 19th.; for that was the first demand made by an inhabitant of the parish, and a reasonable time must be allowed for the purpose of making out the copy. It appears by the evidence that a copy was made out by 12 o'clock that night, and delivered early next morning to the plaintiff's attorney. The defendant therefore complied with that demand within a reasonable time. Besides the penalty is given to the party aggrieved. Now the plaintiff was not aggrieved by this act of the defendant for he might have entered his appeal at the then next sessions, and the justices might have adjourned it to a further sessions under stat. 17 *G.* 2. *c.* 38. § 4. Besides by stat. 41 *G.* 3. *c.* 28. § 5. the parties might in open court have consented to waive any objection to the appeal. — For the rule, it was said that the statute imposes a public duty upon the churchwardens to permit the inspection of the rate, and to give copies without reference to any injury done to an individual. The question was not submitted to the jury whether the request was made at a reasonable time and place. The question submitted to them was whether the demand was complied with within a reasonable time. A refusal was distinctly proved; and that being so, a right of action had vested in the plaintiff which was not divested by a subsequent offer to allow the plaintiff to inspect the rate. It might have been a question for the jury whether the acts proved amounted to a refusal to permit an inspection or to give a copy, but upon that point the weight of evidence was in favour of the plaintiff, for it appeared that he had notice that a copy would be received of him on the 19th. — *Abbott* C. J. My doubt in this case is not whether the learned judge left the proper question to the jury, but whether he ought to have left any question at all to the jury. I think that the plaintiff ought to have been nonsuited. Stat. 17 *G.* 2. *c.* 3. § 2. enacts "that the churchwarden, and overseers shall permit all and every the inhabitants of the said parish, township, or place, to inspect every such rate at all seasonable

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times paying one shilling for the same, and shall upon demand forthwith give copies of the same, or any part thereof, to any inhabitant of the said parish, township, or place, paying at the rate of sixpence for every 24 names. The person therefore, to whom an inspection is to be allowed or a copy to be given must be an inhabitant. The defendant therefore was not bound to attend to the request made by the attorney of the plaintiff on the 17th. The next clause enacts, that in case any overseer shall not permit any inhabitant or parishioner to inspect the said rates, or shall refuse or neglect to give copies thereof, such churchwarden or overseer, for every such offence shall forfeit and pay to the parties aggrieved 20*l*." The latter words plainly import that the penalty is to be given to the person who has sustained an injury by the act of the overseer. Now here the plaintiff sustained no injury, for he was not deprived of his appeal by what took place, as it might have been entered at the next sessions, and the justices had however, to adjourn it to a subsequent sessions. The question left to the jury was whether the defendant had complied with the request of the plaintiff, to be permitted to inspect the rate or to give a copy within a reasonable time. Before any right of action could vest in the plaintiff, by reason of the defendant's not permitting him to inspect the rate, a request must have been made for such permission at a reasonable time and place. The house of the overseer, where he may be fairly supposed to keep the rate book, must be the reasonable place for making such a request or demand. Now, in this case, the overseer without having any notice that the rate book is required, is desired to come to the plaintiff's house, and the demand to inspect the rate book is made at a place where it was known he could not have the book with him. That was an unreasonable place for making the request. I think, therefore, that there was, in this case, no legal request or demand to inspect the rate book. Then, as to the copy of the rate, assuming that the *demand of a copy made by* the solicitor in the presence of the plaintiff was a demand by the latter, the defendant was entitled to a reasonable time to comply with that demand. For although the statute requires the overseer to furnish the copy *forthwith*, that word must receive a reasonable construction so as to give the overseer an opportunity of making the copy required. Here the copy was made during the night, and delivered the following morning. That demand was complied with in a reasonable time, and therefore, the plaintiff ought to have been nonsuited.

8. Remedy by Application to Two Justices out of Sessions, with Consent of Overseers, in Cases of Inability through Poverty to pay the Rate.

By stat. 54 *Geo.* 3. *c.* 170. § 11. it is enacted, "that it shall and may be lawful for any two or more of H. M.'s justices of the peace acting for the county, riding, division, or jurisdiction, in which any district, parish, township, or hamlet shall be situated, in petty sessions assembled, on application made to them by any person rated to any rates or cesses within any such district, township, parish or hamlet, to be discharged therefrom, and proof of his or her inability, through poverty, to pay such rate or cess, with the consent of the churchwardens and overseers of such district, parish, township, or hamlet, or of such other person or persons as is or are competent to act, under the authority of any act or acts of parliament, for the ordering, management, controul, or direction of the poor of any such district, parish, township, or hamlet, to order and direct that such person shall be excused from the payment of such rate or cess, and to strike out his or her name therefrom; and the sum at which such person was so rated in such rate or cess shall not hereafter be collected, or any person or persons charged therewith, or in any manner called or liable to account for the same, or for omitting to collect or receive the same."

54 G.3. c.170. Justices out of sessions, with consent of parish officers, may discharge paupers from the payment of parish rates.

9. Appeal; and the Power of the Sessions thereupon.

43 Eliz. c.2. By stat. 43 *El. c.* 2. § 6. If any person shall find himself grieved with any cess, or tax, or other act, done by the said churchwardens or other persons, or by the said justices of peace, then it shall be lawful for the justices of peace at their general quarter sessions, or the greatest number of them, to take such order therein as to them shall be thought convenient, and the same to conclude and bind all the said parties.

17 G.2. c.38. By stat. 17 *Geo.* 2. *c.* 38. § 4. If any person shall find himself aggrieved by any rate or assessment made for the relief of the poor, or shall have any material objection to any persons being put on or left out of such rate, &c. or to the sum charged on any person therein; or shall find himself aggrieved by any neglect or thing done or omitted by the churchwardens and overseers, or by any of the justices; he may, giving reasonable notice (see Form, *post.*) to the churchwardens or overseers, appeal to the next sessions for the county, riding, division, corporation, or franchise where the parish, township, or place lies, and the justices then assembled shall receive such appeal, and hear and finally determine the same; but if reasonable notice was not given, then they shall adjourn the appeal to the next quarter sessions, and then and there finally hear and determine the same.

§ 5. Provided, that in all corporations or franchises not having *four* justices of the peace, the appeal *may be* to the next general or quarter sessions for the county, riding, or division wherein such corporation or franchise is situate. (Extended to corporations, &c. not having more than *six* justices, see stat. 1 *G.*4. *c.*36. *post*, p. 141.)

§ 6. And on all appeals from rates and assessments, the justices shall amend the same in such manner only as shall be necessary for giving relief, without altering such rates, &c., with respect to other persons mentioned in the same; but if upon an appeal from the whole rate, it shall be found necessary to quash or set aside the same, then they shall order and direct the churchwardens and overseers to make a new and equal rate.

Costs. Also by § 4. The court may award to the party for whom such appeal shall be determined, reasonable costs, as in cases of settlement by stat. 8 & 9 *W.* 3. *c.* 30.

The sessions cannot award costs unless the appeal be entered and determined. *Rex* v. *The Justices of Essex*, *E.* 40 *Geo.* 3. 8 *T. R.* 583. 2 *Bott*, 757. 2 *Nol. P. L.* 475, 3*d edit.* The Rev. *J. R. H.* gave notice of his intention to appeal to the quarter sessions in *Essex*, against a rate made for the relief of the poor of the parish of *Upminster*, and, on the day before the sessions, countermanded his notice; whereupon the parish officers of *Upminster* applied to the sessions for the costs to which they had been put in preparing to resist the appeal, under the statute 17 *Geo.* 2. *c.* 38. § 4. But the court of quarter sessions thinking they had no authority under the statute to give costs, as no appeal was entered, refused to hear the evidence which the parish officers were prepared to offer, in order to shew that they had been unnecessarily put to great expence. On motion for *mandamus*. *Per curiam*. The quarter sessions have no authority to award costs under the statute 17 *Geo.* 2. *c.* 38. *unless* an *appeal* has been *entered and determined*. The determination of the appeal is a condition precedent to the

power to give costs, the words of the act being, "may award to the party for whom such appeal shall be determined reasonable costs" &c., and the subsequent words, in the same manner that they are empowered to do in case of appeals concerning the settlement of poor persons" &c., only relate to the mode in which those costs are to be recovered: By referring to the former statute under which costs may be given in two instances, and by mentioning only one of those instances in the latter statute, it is evident that the legislature did not intend by the latter to authorise the sessions to give costs in both cases. Rule refused.

Rex v. The Justices of Essex.

And now by stat. 41 *G.* 3. U. K. *c.* 23. Several important provisions relative to appeals against poor rates have been enacted.

41 G. 3. U.K. c. 23.

By § 1. It is enacted, that upon all appeals from any rate, or assessment made for the relief of the poor of any parish, township, vill, or place, the court of general or quarter-sessions of the peace shall, and such Court is hereby authorised and required (in all cases where they shall see just cause to give relief) to amend such rate or assessment, either by inserting therein or striking out the name or names of any person or persons, or by altering the sum or sums therein charged on any person or persons, or in any other manner which the said court shall think necessary for giving such relief, and without quashing or wholly setting aside such rate or assessment: Provided always, that if the said Court shall be of opinion that it is necessary, for the purpose of giving relief to the person or persons appealing, that the rate or assessment should be wholly quashed, then the said Court may quash the same; but nevertheless, all and every the sum and sums of money in and by such rate or assessment charged on any person or persons, shall and may be levied and recovered by such ways and means, and in such and the same manner, as if no appeal had been made against such rate or assessment: and all and every the sum and sums of money which any person or persons charged in such rate or assessment shall pay, or which shall be levied upon or recovered from him, her, or them, shall be deemed and taken as payments, on account of the next effective rate or rates, assessment or assessments, which shall be made for the relief of the poor of the same parish, township, vill, or place.

On appeal from any poor rate, the quarter session may *amend* it without quashing it, or if necessary to grant relief, may quash the rate, but the sum assessed shall notwithstanding be levied.

By § 3. In case the said court of general or quarter sessions of the peace shall, upon appeal, order any rate or assessment for the relief of the poor to be quashed, it shall be lawful for the said court to order that any sum or sums of money, in and by such rate or assessment charged on any person or persons, or any part of any such sum or sums, not to be paid, and then and in every such case, no proceedings shall, after making such order, be commenced; or if any proceedings have been previously commenced, such proceedings shall be no further prosecuted or carried on for the purpose of levying or enforcing the payment of any sum or sums which shall be so ordered by the said court not to be paid as aforesaid: Provided always, that no justice of the peace, constable, or other officer of the peace, or other person, shall be deemed a trespasser, or liable to any action, for any warrant, order, act, or thing, which such justice, constable, or other officer or person shall have granted, made, executed, or done, for the purpose of levying or enforcing the payment of any such sum or sums of money, before he shall have had notice in writing

Quarter sessions having ordered a rate to be quashed, may order the sum charged on any person not to be paid, and stop proceedings for the recovery thereof, &c.

41 G. 3. U.K. c. 23.

of the order for the non-payment of such sum or sums of money, which the said court is hereby authorized to make as aforesaid.

Notices of appeal to be given to the churchwardens and overseers of the poor, &c. A. A.

By § 4. All notices of appeal (A. A. p. 150.) from or against any rate or assessment made for the relief of the poor, or from or against the account of the churchwardens and overseers of the poor of any parish, township, vill, or place, shall be in writing, and shall be signed by the person or persons giving the same, or his, her, or their attorney on his, her, or their behalf; and such notices of appeal shall be delivered to or left at the places of abode of the churchwardens and overseers of the poor of the parish, township, vill or place, or any two of them, and the particular causes or grounds of appeal shall be stated and specified in such notice; and upon the hearing of any appeal from or against any such rate or assessment, or account, the court of general or quarter sessions to which such appeal shall be made, shall not examine or enquire into any other cause or ground of appeal than such as are or is stated and specified in the notice of appeal.

Appeals may be decided, if the parties consent, although notice be not given.

§ 5. Provided nevertheless, That, with the consent of the overseers, signified by them or their attorney in open court, and with the consent of any other person interested therein, the said court of sessions may proceed to hear and decide upon such appeal, although no notice thereof shall have been given in writing; and also that with the like consent such court may hear and decide upon grounds of appeal, not stated or misstated in such written notice, where any notice shall have been given in writing.

Persons appealing against any rate shall give notice, not only to the churchwardens, &c. but also to the persons interested, &c.

By § 6. If any person or persons shall appeal against any rate or assessment made for the relief of the poor, because any other person or persons is or are rated or assessed in such rate or assessment, or is or are omitted to be rated or assessed therein, or because any other person or persons is or are rated or assessed in any such rate or assessment at any greater or less sum or sums of money than the sum or sums at which he, she, or they ought to be rated or assessed therein, or for any other cause that may require any alteration to be made in such rate or assessment with respect to any other person or persons, then, and in every such case the person or persons so appealing for the causes aforesaid, or any of them, shall give such notice of appeal, in writing as hereinbefore mentioned, not only to the churchwardens or overseers of the poor, or any two or more of them, but also to the other person or persons so interested or concerned in the event of such appeal as aforesaid; and such other person or persons shall, if he, she or they shall so desire, be heard upon the said appeal; and it shall be lawful for the court of general or quarter sessions of the peace, on the hearing of such appeal, to order the name or names of such other person or persons to be inserted in such rate or assessment, and him, her, or them to be therein rated and assessed at any sum or sums of money, or to order the name or names of such other person or persons to be struck out of such rate or assessment, or the sum or sums at which he, she, or they is or are rated or assessed therein, to be altered, in such manner as the said court shall think right; and the proper officer of the said court shall forthwith add to or alter the rate or assessment accordingly.

The rate shall be recovered

§ 7. And if upon the hearing of any appeal from or against any rate or assessment, the said court shall order the name or

names of any person or persons to be inserted therein, and him, her, or them to be rated or assessed at any sum or sums of money, or shall order the sum or sums at which any person or persons is or are therein rated or assessed to be raised or increased, then, and in such case all and every the sum and sums of money at or to which such person or persons shall be so ordered to be rated or assessed, or to be raised or increased, or so much thereof as shall not have been already paid, shall and may be recovered in such and the same manner, and by such and the same means, as if he, she, or they had been originally named in such rate or assessment, and rated or assessed therein at such sum or sums of money.

41 G. 3. U.K. c. 23.

as altered by the quarter sessions.

§ 8. And if upon the hearing of any appeal from any rate or assessment for the relief of the poor, the court of general or quarter sessions of the peace shall order the name or names of any person or persons to be struck out of such rate or assessment, or the sum or sums rated or assessed on any person or persons to be decreased or lowered; and if it shall be made appear to the said court, that such person or persons hath or have previously to the hearing of such appeal, paid any sum or sums of money, in consequence of such rate or assessment, which he, she, or they ought not to have paid, or been charged with, then and in every such case the said court shall order all and every such sum and sums of money to be repaid and returned by the said churchwardens and overseers of the poor to the person or persons having paid the same respectively, together with all reasonable costs, charges, and expences occasioned by such person or persons having paid or been required to pay the same; and all and every the sum and sums of money so ordered to be repaid or returned by the churchwardens and overseers of the poor, or any of them, shall and may, together with all such costs, charges, and expences as aforesaid, be levied and recoverd from them, or any of them, by distress and all such other ways and means as the money charged, rated, or assessed on any person, by any rate or assessment made for the relief of the poor, can or may be by law levied or recovered.

In case in the rate the name of any person shall be struck out, or any sum lowered, the quarter sessions shall order the money, which ought not to have been recovered, to be repaid.

Rex v. *The Justices of Essex*, *M.* 57 *G.* 3. 5 *M.* & *S.* 513. Upon a R. N. for a *mandamus* to the justices of *Essex*, to receive an appeal against a poor's-rate for the parish of *Saffron Walden*, which the justices had refused to receive at their last *Midsummer* quarter sessions, on the ground that it ought to have been made to the justices of the town sessions. The case was this: The limits of the town and parish of *Saffron Walden* are co-extensive. The town of *Saffron Walden* is a town corporate, and by the charter, (dated the 26th *December*, 6 *W.* & *M.*), the mayor, during his mayoralty, and for one whole year next ensuing, the recorder and the deputy recorder for the time being, and the two senior aldermen for the time being, (making together six) are constituted justices within the town and precincts thereof. The corporation of *Saffron Walden* have regularly held a court of quarter sessions from the date of their charter. The mayor is elected from among the aldermen, and the aldermen from the inhabitants of the town, and, except in the instance of the recorder and deputy recorder, the justices composing the court of quarter sessions must be resident in the parish of *Saffron Walden*. The mayor, in case of sickness or absence from the town, may appoint a deputy from among the aldermen. The appellants gave regular notice to the parish

Where corporation justices consist of a greater number than four, an appeal lies to them at sessions against a poor rate, although there be less than four who are devoid of interest in the question. (See Rex v. the Just. of Carmarthen, *post.*)

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officers of their intention to appeal, and also (among others) to the mayor and recorder, as being two of the persons in respect of whom they were overrated: and three of the other town justices were also rated in the said assessment.—After argument, the Court, thinking the case to be of general importance, desired time to look into the acts.—Lord *Ellenborough* C. J. now delivered the judgment of the Court. In the case respecting the justices of the borough of *Saffron Walden*, which was depending yesterday, the Court took time to look into the several acts of parliament, and cases referred to. Of the six corporation justices, consisting of the recorder, deputy-recorder, two senior aldermen, and two other persons, it was contended, that the last four were disqualified by law from sitting upon any appeal in any matter respecting the poor laws, as being, in respect of their inhabitancy and liability to be rated within the borough, on that account, incompetent, and that these being judicial acts, as persons interested, they were, in the language of one of the cases cited, tacitly excepted. And the case of the parishes of *Great Charte* and *Kennington*, 2 *Str.* 1173., and of *Foxham Tything*, in *Com. Wilts*, 2 *Salk.* 607., was relied on to this effect; but, upon looking into the stats. 43 *Eliz. c.* 2, 16 *G.* 2. *c.*18., and 17 *G.* 2. *c.*38., we are of opinion that the justices of the borough of *Saffron Walden* are not disqualified from sitting as a court of appeal under the poor laws, on the ground of their being rated or chargeable with the rates of the place within which their jurisdiction is to be exercised. By stat. 43 *Eliz. c.* 2. § 8., as head officers of the town corporate, they being justices of the peace, have the same authority within the limits and precincts of their jurisdiction, as is limited, prescribed, and appointed by that act to justices of the peace of the county, "and no other justices of the peace are to enter or meddle there." Being invested with the like jurisdiction, both original and appellate, on the subject of the poor laws, with justices of the county, and with the sort of *ne intromittant* provision in their favour as to its exercise, which I have last stated, there occurred in *Mich.* term, 16 *G.* 2., the case in 2 *Str.* 1173., in which it was held that a justice could not join in removing a pauper from his own parish. This decision, in its letter, if it should continue to be acted upon as a general rule of law, would have wholly disabled the justices of a great many towns corporate from acting in the execution of the poor laws, both in an original and in an appellate character, as justices in respect to the same; and it is fair to presume, from the very nearly contemporary date of the stat. 16 *G.* 2. *c.* 18. with this decision, that this act was introduced to obviate this inconvenience; for reciting, "that doubts had arisen, whether, according to the laws and statutes then in force, his majesty's justices of the peace might lawfully act in any case relating to the parishes and places to the rates and taxes of which such justices respectively are rated or chargeable," it enacts, that it shall and may be lawful to and for all and every justice or justices of the peace for any county, riding, city, liberty, franchise, borough, or town corporate, within their respective jurisdictions, to make, do and execute all and every act or acts, matter or matters, thing or things, appertaining to their office as justice or justices of the peace, so far as the same relates to the laws for the relief, maintenance, and settlement of poor persons, or to any other laws concerning parochial taxes, levies, or rates, notwithstanding any

such justice or justices of the peace is or are rated to or chargeable with the taxes, levies, or rates within any such parish, township, or place affected by any such act or acts of such justice or justices as aforesaid." However, inasmuch as, from the greatness of the number of justices of the peace for counties, the attendance of any particular justice could be spared upon appeals, it provides "that that act, or any thing therein contained, should not authorize or empower any justice or justices of the peace for any county or riding at large, to act in the determination of any appeal to the quarter sessions for any such county or riding, from any order, matter, or thing relating to any such parish, township, or place where such justice or justices of the peace is or are so charged, taxed, or chargeable as aforesaid; any thing therein contained to the contrary notwithstanding." Here, it will be observed, that "justices of the peace for cities, liberties, franchises, boroughs, or towns corporate," who are all included by name in the enabling clause of this statute, are not included in this prohibitory provision in the case of appeals, which prohibition is confined expressly to the justices of the peace for counties and ridings at large only. The stat. 17 *G. 2. c.*38. § *5.*, probably adverting to and meaning to obviate the danger of admitting justices, under any bias or interest in the subject-matter of the appeal, to sit upon such appeals, where, from the smallness of the number of the attending justices, such bias or interest shall be likely to operate with prejudicial effect upon the administration of justice, provides, "that in all corporations and franchises, which have not four justices of the peace, it shall and may be lawful for any person or persons, in any of the cases aforesaid, where an appeal is given by this act, to appeal, if he or they shall think fit, to the next general or quarter sessions of the peace for the county, riding, or division wherein such corporation or franchise is situate:" where the corporation justices consisted of a larger number of persons than four, thinking it probably unnecessary to interfere with the exclusive jurisdiction on this subject, which they derived under stat. 43 *Eliz. c.*2. § 8., which has already been observed upon. We are, therefore, upon a view of the provisions of the several statutes referred to on this subject, and adverting to their policy and object, of opinion that the legislature meant, in the case of borough justices, (where the whole number of them was four or more,) as in the present case, to leave their jurisdiction under 43 *Eliz.* entire, not curtailed or abridged, from suspicions of possible abuse; a liberal confidence on the part of the legislature, which ought to be repaid by the most perfect impartiality and justice on the part of those to whom such a jurisdiction is, under such circumstances, entrusted. R. D.

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By stat. 1 *Geo.* 4. *c.*36. after reciting that whereas by stat. 17 *Geo.* 2. *c.*38. [*ante*, p. 136.] it is amongst other things provided, that in all corporations or franchises which have not four justices of the peace, it shall and may be lawful for any of the person or persons, in any of the cases mentioned or referred to by the said act, where power of appeal is given, to appeal, if he or they shall think fit, to the next general quarter sessions of the peace for the county, riding, or division wherein such corporation or franchise is situate: and whereas it would conduce to the more

1 G. 4. c. 36.

Allowing an appeal to the county general or quarter sessions from

1 G. 4. c. 36.

corporations and franchises, not having six justices.

equal and impartial administration of justice, if such power of appeal were extended: it is enacted, *that in all corporations and franchises not having more than six justices of the peace, nor having jurisdiction or authority over two or more whole parishes or wards contained within such corporation or franchise, it shall and may be lawful for any person or persons, in any of the cases mentioned or referred to by the said act or acts, or either of them, where an appeal is given by the said act or acts, or either of them, to appeal, if he, she, or they shall think fit, to the next general or quarter sessions of the peace for the county, riding, or division wherein such corporation or franchise is situate, in as ample manner as if such corporation or franchise had not four justices of the peace: provided always, that nothing herein contained shall be deemed or taken to extend to any city or town corporate, being a county of itself.*

Rex v. *St. Mary, Taunton, E.* 12 *Geo.* 1. 1 *Bott,* 274. The clause of 43 *El. c.* 2. gives the justices and sessions of boroughs power over appeals against rates made for the places within the borough, exclusive of the county.

Appeal must be to the next sessions after the allowance.

In *Rex* v. *Atkins, M.* 31 *Geo.* 3. 4 *T. R.* 12. 1 *Bott,* 287. 2 *Nol. P. L.* 397. 3*d edit.* It appeared that the rate was made in *October* 1789, and allowed in the *November* following, against which the defendant appealed to the next *Easter* sessions, when the appeal was dismissed with costs, because it was not made to the *next* sessions. — The rate and order of sessions being removed by *certiorari, the court* without hearing any argument confirmed the order of sessions on the authority of *Rex* v. *Penryn,* and *Rex* v. *Micklefield.*

What are the '*next*' sessions.

Rex v. *Coode and others, T.* 24 *Geo.* 3. 1 *Bott,* 281. 2 *Nol. P. L.* 397. 402. 3*d edit.* The next sessions means the next to which the party can by possibility appeal after being aggrieved by the rate; and this is always a question of fact.

So also it was adjudged in *Rex* v. *Justices of the East Riding of Yorkshire. E.* 19 *Geo.* 3. 2 *Bott,* 727. 2 *Nol. P. L.* 409.

One intervening day between the publication of a rate, and the next immediate quarter sessions, is not sufficient for an effectual notice of appeal.

Rex v. *The Justices of Sussex, H.* 52 *Geo.* 3. 15 *East,* 206. *Bott, Cont.* 1. 2*Nol. P. L.* 401.439. 3*d edit.* A *mandamus* was moved for to the defendants, to cause continuances to be entered on the appeal of *W. Rickwood, G. Dawson,* and four others, against a poor's rate to the next general quarter sessions, and at such sessions to hear and determine the same. — The affidavit of *Dawson,* one of the appellants, stated that on the 5th of *October* last a poor's rate was allowed by two justices, and on the following day (*Sunday*) it was published in the parish church of *Horsham.* That the *Mich.* quarter sessions were holden at *Petworth,* on the 8th of *October,* there being only one intervening day between the publication of the rate and the quarter sessions, which was too short a time to inspect the rate, to see if the inequalities in the former rate had been continued, and whether the property omitted in former assessments had been inserted in the rate, so as to determine the deponent whether or not to appeal against it at the said sessions. The affidavit of the attorney for the appellants also stated that after giving due notice of appeal to the several persons interested, the appeal was entered for trial at the last sessions held at *Chichester,* when, after proof of the service of the notice, objections were taken, 1*st,* that the appeal was out of time because not lodged at the *October* sessions

preceding: *2dly*, that notices of appeal should have been separately given by each appellant, and not one conjoint notice. That the Court determined the notice bad on both grounds, and upon this, confirmed the rate with costs. The notice given was signed by the six appellants, and stated the causes of appeal: *1st*, that several persons (*nominatim*) were not in any manner rated for the lands, &c. occupied by them: *2dly*, that several persons (*nominatim*) were rated at much less and not enough in proportion with the appellants for the premises in their occupation. *Petworth* is distant from *Horsham*, where the appellants resided, about eighteen miles. The affidavit of the parish officers opposing the rule stated that in the evening of the 6th of *October*, after the rate was published in the church, a vestry was held, at which two of the appellants were present, and no application was then made by them to inspect the rate. [Lord *Ellenborough* C. J. asked why the parish officers made their rate so close upon the time of the sessions; it appeared as if they had done it with a view of ousting the parties of their appeal. The court had decided that morning that the *next* sessions meant the next practicable sessions at which an effectual appeal could be lodged. If by the late publication of the rate the parties are driven into such a narrow point of time as not to be able to make an effectual appeal at the next sessions; those must be considered the next when such appeal can be made effectually.] They then objected, *2dly*, that the appellants should not have given a joint but separate notices. But in support of the rule, *Rex* v. *White*, 4 *T. R.* 771. was cited as an authority to shew that parties who have several grounds of complaint may notwithstanding join in an appeal against a poor's rate.— Lord *Ellenborough* C. J. said, that he thought that case which had been much considered, was authority sufficient to support the present appeal; and the rule for a *mandamus* was granted.

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***Next* sessions, means the next practicable sessions at which an effectual appeal can be lodged.**

Several parties having a joint grievance, may join in giving one notice of appeal to the parish officers.

Rex v. *The Justices of London*, 15 *East*, 632. *Bott*, *Cont.* 2. An appeal against a poor's rate in *London* or *Middlesex* must be made, as in all other counties, to the next, (*i.e.* next practicable) general *quarter* sessions; though the stat. 17 *Geo.* 2. *c.* 38. § 4. in its terms gives the appeal to the next *general* or *quarter* sessions; it appearing from other parts of the act as well as from other acts *in pari materia*, that those terms are used synonymously, and though in the two counties named there are four *general* as well as four *general quarter* sessions.

Rex v. *The Justices of Suffolk*, *T.* 58 *Geo.* 3. 1 *B.* & *A.* 640. By a local act the management of the poor of a town was vested in certain persons, who were empowered to make rates, and an appeal was given to the party aggrieved to the town sessions against every such rate; and a further appeal, if required, to the county sessions. An appeal against four rates being entered at the *January* town sessions, four grounds of appeal were specified in the notice; the party, being dissatisfied, made a further appeal to the county sessions, and two other grounds of appeal were added, the fourth being that the party was rated in respect of his lands in a higher proportion than all the other inhabitants mentioned in the rate. The Court of *K. B.* held, *first*, that one appeal against the four rates was sufficient; *secondly*, that it was not necessary to give notice of appeal to all the inhabitants named in the rate; and,

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thirdly, that the appellant must, at the county sessions, be confined to the original grounds of appeal at the town sessions.

Next sessions also means, '*next after the allowance*,' *Rex* v. *Atkins*, *M.* 31 *Geo.* 3. 4 *T. R.* 12. 1 *Bott*, 287. 2 *Nol. P. L.* 397. 3*d edit.*

Rex v. *Justices of Sussex*, *H.* 37 *Geo.* 3. 7 *T. R.* 107. 2 *Bott*, 728. The appeal may be made to an adjourned sessions. And in this case Lord *Kenyon* C. J. referred to the case of *Rex* v. *Monks*, *Risborough*, (2 *Bott*, 723.) and *Rex* v. *Hinderclave*, (2 *Bott*, 723.)

Of the notice.

Rex v. *Justices of Berkshire*, *H.* 27 *Geo.* 2. 1 *Bott*, 274. 2 *Nol. P. L.* 424. 3*d edit.* If the ground of appeal against a poor rate be, that certain persons are omitted in the rate, the names of those persons should be specified in the notice of appeal.

See also *Rex* v. *Justices of Sussex*, (*ante*, p. 143.) as to joint and several notices.

Which party shall begin.

In *Rex* v. *Newberry*, *M.* 32 *Geo.* 3. 4 *T. R.* 475. 1 *Bott*, 289. 2 *Nol. P. L.* 440. 3*d edit.* Upon an appeal against a poor rate the question was, which party should begin? The Court said, that where the appellant alleges that he has no rateable property within the place, the respondents should first shew that he has some property liable to be rated; for it is impossible for the appellants in the first instance to prove the negative. And *J. Heywood*, *amicus curiæ*, said, that in *Yorkshire*, where more appeals of this kind were lodged than in any other county, when the appellant objected to his being rated at all, it is the practice for the respondents to begin; but if he object to the *quantum* of the rate, then the *onus* lay on him.

Where the appellant disputes before the sessions the *quantum* of the rate, it is not sufficient for the respondent to shew that the appellant is in possession of *some* rateable property within the parish, they must also shew some probable ground for the *amount* at which they charge the party in the rate.

Rex v. *Topham*, *T.* 50 *Geo.* 3. 12 *East*, 546. *Bott*, *Cont.* 63. 1 *Nol. P. L.* 199. The defendant appealed against a poor's rate made for the township of *Great Driffield*, in the East Riding of the county of *York*, and the sessions confirmed the rate, subject to the opinion of the Court of K. B. on the following case: — The defendant was rated as occupier of property of the annual value of 250*l.*, and he appealed against the rate, giving notice of the grounds of his appeal; 1st, That he had no rateable property in the parish; and 2dly, That he had not rateable property to the amount at which he was rated. On the part of the respondents it was proved that the appellant was in the annual receipt of certain tithe rents, originating in the *Driffield* inclosure act, of the annual value of 6*s.* 8*d.* It was further proved that certain other sums were received by him for tithe rents, but there was no proof of their amount. Here the respondents closed their case, insisting that as they had proved the appellant to be in possession of *some* rateable property, it was incumbent on him to prove that in fact he had been over rated. The appellant on the contrary insisted that this composition or rent was not rateable at all. The sessions held that it was rateable. The appellant then contended, that as there was no proof of any specific sum having been paid beyond the 6*s.* 8*d.*, the rate ought to be amended by inserting that sum instead of the 250*l.* The sessions held that the proof of over-rating lay on the appellant, and confirmed the rate generally. The act referred to was one passed in the 14 *Geo.* 2. *c.* 11. for dividing and inclosing open fields, &c. in *Great* and *Little Driffield*, and for settling certain yearly payments to the prebendary of *Driffield*, in lieu of tithes pursuant to

an agreement and award made for those purposes, it states That by an agreement tripartite made between the lord of the manor and owner of several lands, &c. the prebendary of *Driffield*, and his lessee, to which prebend tithes of corn, grain, hay, wool, and lamb belonged; and the vicar and others named, owners and proprietors of lands, &c., the inclosure of these townships was to be made in the manner therein stated, and that a certain *composition in money* was to be paid by the land-owners to the prebendary for the time being, and his lessee, &c. in lieu of the tithes; and That for fixing and settling the said yearly rents and compositions in lieu of the tithes all the parties had appointed certain referees who had awarded to the prebendary of *Driffield* for the time being and his successors, &c. "*as a yearly rent or composition in lieu of the tithes of corn, grain, and hay therein*, the rent or sum of 267*l.* being after the rate of 1*l.* 10*s.* for every oxgang, and in lieu of the tithes of wool and lamb, the yearly rent or sum of 30*l.* &c." The act therefore proceeded to give effect to such agreement and award, and enacted that *in lieu and satisfaction of the tithes* there should be the said several *yearly composition rents or sum* of 267*l.* &c. issuing out of the said enclosed lands, &c. to be paid by the owners and proprietors thereof in certain proportions, to be ascertained by the commissioners, and that if the said *annual composition rents* should be in arrear, the prebendary for the time being, &c. might enter and distrain in the particular lands charged, &c. And that in all future rates and levies in the said townships, the said *composition rents* should be assessed *in the same proportion* as the other landholders. — Lord *Ellenborough* C. J. said, The question is, whether a person who, I will suppose for the present, is liable to be rated for something beyond the 6*s.* 8*d.*, can be rated to the amount of 250*l.*, and then left to pare down that assessment upon an appeal to the amount which it ought to be. He might as well have been charged to the extent of 50,000*l.* It is not stated as a fact in the case that the appellant was in the receipt of the rents and compositions to the amount of 250*l.* If the sessions have proceeded upon what the Court has said in some cases, that if the party rated have rateable property in the parish they will not enquire into the *quantum* of the rate, they have egregiously mistaken the Court. When the question before the sessions is upon the quantum of the rate, the officers making it must shew to the justices some probable ground for the amount at which they charge the party in the rate. The mischief of any other rule would be enormous: a small occupier may be rated at once in the round sum of 1000*l.*, and left to struggle his way out of that charge as he can. — For the appellant it was observed, that the question made at the sessions was, whether the appellant should begin by proving his case, that he was over-rated; or whether the parish officers should begin by proving a probable case for rating the appellant at so much. On which *Le Blanc* J. said, the Court would have no difficulty in dealing with that naked proposition whenever it should be brought nakedly before them. The case was sent back to sessions. (R. v. Topham.)

(Who may be witnesses.) *Rex* v. *Prosser and others.* *M.* 31 *Geo.* 3. 4 *T. R.* 17. 1 *Bott*, 287. 2 *Nol. P.L.* 508. 3*d ed.* On an appeal against a poor rate because certain persons were omitted to be rated, it was determined, that a parishioner who is *liable* to be rated, but who

R. v. Prosser. is *not* in fact rated, is a competent witness to prove the rateability of appellants.

54 G. 3. c. 170. Inhabitants not to be incompetent witnesses in certain cases on behalf of or against their parishes.

And by stat. 54 *Geo.* 3. *c.* 170. § 9. It is enacted, "that no inhabitant or person rated or liable to be rated to any rates or cesses of any district, parish, township, or hamlet, or wholly or in part maintained or supported thereby, or executing or holding any office thereof or therein, shall before any court or person or persons whatsoever, be deemed and taken to be by reason thereof an incompetent witness for or against such district, parish, township, or hamlet, in any matter relating to such rates or cesses, any law, usage, statute, or custom, to the contrary in anywise notwithstanding."

Meredith v. *Gilpin and others, M.* 1818. 6 *Price*, 146. Trespass against an overseer of a parish for breaking plaintiff's close. The close was claimed by the parish under an inclosure act, by which (if they succeeded in the action) the land would be vested in the overseers for the time being, in trust for the parish, in aid of the poor's rates. — *Holroyd* J. at the Staff. Summ. Ass. 1818, and the Court of Exchequer (*absente* Richards C.B.) held, that rated inhabitants were admissible witnesses by virtue of stat. 54 *G.* 3. *c.* 170. § 9.

17 G. 2. c. 38. After appeal, rates to be entered in a book.

By stat. 17 *Geo.* 2. *c.* 38. § 13. It is enacted, that "true and just copies of all rates and assessments hereafter to be made for the relief of the poor, be fairly wrote and entered in a book or books to be provided for that purpose, by the churchwardens and overseers of the poor of every parish, township or place, who shall take care that such copies be wrote and entered accordingly, within fourteen days after all appeals from such rates are determined, and shall attest the same by putting their names thereto; and all and every such book or books shall be carefully preserved by the churchwardens and overseers of the poor for the time being or one of them, in some publick or other place, in every such parish, township or place, whereto all persons assessed or liable to be assessed, may freely resort, and shall be delivered over from time to time to the new and succeeding churchwardens and overseers of the poor as soon as they enter into their said offices, to be preserved as aforesaid, and shall be produced by them at the general or quarter sessions, when any appeal is to be heard or determined."

10. Of Distraining for the Poor Rate.

43 El. c. 2. Rate to be levied by distress. B. C.

By stat. 43 *Eliz. c.* 2. § 4. *It shall be lawful, as well for the present as subsequent churchwardens and overseers, or any of them, by warrant* (B. C.) *from any two such justices, one whereof is of the* quorum, *to levy the said sums, and all arrearages of every one that shall refuse to contribute according as they shall be assessed, by distress and sale.*

17 G. 2. c. 38.

And by stat. 17 *Geo.* 2. *c.* 38. § 7. "The goods of any person assessed, and refusing to pay, may be levied by warrant of distress, not only in the place for which such assessment was made, but in any other place within the same county or precinct; and if sufficient distress cannot be found within the said county or pre-

A.

cinct, on oath (A.) made before some justice of any other county or precinct, (which oath shall be certified under the hand of such justice on the said warrant,) such goods may be levied in such

other county or precinct by virtue of such warrant (B.C.) and certificate; and if any person shall find him or herself aggrieved by such distress as aforesaid, it shall and may be lawful for such person to appeal to the next general or quarter sessions of the peace for the county or precinct where such assessment was made, and the justices there are hereby required to hear and finally determine the same."

17 G. 2. c. 38.

B.C. Appeal.

By stat. 54 *Geo.* 3. *c.* 170. § 12. It is enacted, "that the goods and chattels of any person or persons neglecting or refusing to pay any sum or sums of money legally assessed on and due from him, her, or them in respect of any rate for the relief of the poor, church cess, or highway cess, of any district, parish, township, or hamlet, for the space of seven days after the same shall have been legally demanded of him, her, or them, shall and may be distrained, not only within such district, parish, township, or hamlet, but also within any other district, parish, township, or hamlet, within the same county, riding, division, or jurisdiction; and if sufficient distress cannot be found within the same county, riding, division, or jurisdiction, then, upon oath (A.) thereof made before any one or more justice or justices of the peace for any other county, riding, division, or jurisdiction, in which any of the goods or chattels of such persons shall be found, which oath such justice or justices are hereby required to administer and certify, by indorsing in his or their respective handwriting, his or their name or names, on the warrant granted to make such distress, the goods and chattels of the said person or persons so neglecting or refusing to pay as aforesaid, shall be subject and liable to such distress and sale, in such other county, riding, division, or jurisdiction, where the same shall be found; and may, by virtue of such warrant and certificate, be distrained and sold in the same manner as if the same had been found within the district, parish, township, or hamlet, in or for which such rate or cess had been made or was due."

54 G. 3. c. 170. Distress for poor's rate, &c. if not to be found within the district, &c. may be made out of the district.

A.

By 41 *Geo.* 3. (U.K.) *c.* 23. § 1. If the sessions should quash the rate, all the sums of money by such rate charged on any person, shall nevertheless be levied in the same manner as if no appeal had been made against such rate; and such sums when levied or recovered, shall bo taken as payment on account of the next effective rate made for the relief of the poor of the same parish, township, vill, or place.

41 G. 3. (U.K.) c. 23. If rate be quashed, the sums charged to be levied and taken as payment on account of the next effective rate.

By § 2. All and every the sum and sums of money at which any person or persons is or are or shall be rated or assessed, in any rate or assessment made for the relief of the poor of any parish, township, vill, or place, shall and may be levied and recovered by distress, and all other lawful ways and means, notwithstanding the person or persons so rated or assessed, or any other person or persons, shall have given notice of appeal from or against such rate or assessment, for any cause whatsoever: Provided always, that if any person, rated or assessed in any rate or assessment, made for the relief of the poor, shall give such notice of appeal as hereinafter mentioned, (vide § 4. *ante* p. 138.) to the churchwardens and overseers of the poor of any parish, township, vill, or place, or any two of them, then, from and after the giving of such notice, and until the appeal shall have been heard and determined, no proceedings shall be commenced or carried on to reco-

Notice of appeal not to prevent a distress for a sum not greater than that assessed in the last effective rate.

41 G. 3. (U.K.) c. 29.

ver any greater sum or sums of money from such person or persons, than the sum or sums at which he, she, or they, or any occupier of the same premises, shall have been rated or assessed in the last effective rate, which shall have been collected in such parish, township, vill, or place.

By § 3. If the court shall order any rate or assessment to be quashed, they may order any sum charged on any person, or any part of it, not to be paid, and in that case no proceedings shall be commenced, or being commenced, be carried on, for the purpose of enforcing the payment of any sum so ordered not to be paid.

By § 7. If the court, upon hearing an appeal against any rate, shall order the name of any person to be inserted therein, and that such person shall be rated, or shall order the sum at which any person is already rated to be increased, such several sums so inserted or increased, shall be recoverable in the same manner as if they had been originally inserted. (Vide § 1. *ante*, p.137.)

Oath of the refusal to pay the rate must be made before the justices, previously to distraining for non-payment.

But by *Holt* C.J. in the case of *Tracey* and *Talbot*, *T.* 3 *Ann.* 2 *Salk.* 532. 1 *Bott*, 250. 1 *Nol. P. L.* 258. The rate cannot be distrained for, by virtue of a general warrant made before the rate; but there ought to be a special warrant on purpose. That is to say, the non-feasance of the party shall not be left to the judgment of the officer, who may, out of private resentment, sell his neighbour's goods without sufficient cause; but oath of the refusal must be made before the justices. And it is reasonable that the party should be heard in his defence; for he may shew cause variously why a distress should not be granted: as that the rate was not regularly allowed, or was not published in the church, or that he had given notice of appeal, or that no demand or refusal had been made, and the like.

In what case the court will grant a mandamus to levy a rate.

Rex v. *Justices of Middlesex*, *E.* 19 *Geo.* 2. 1 *Bott*, 250. 1 *Nol. P. L.* 254. Motion for a *mandamus* to the justices of *Middlesex* to sign a warrant of distress for levying a poor's rate upon persons refusing to pay the same. Upon shewing cause, it was set forth in the affidavit to have been the custom not to grant warrants without first summoning the party to shew cause, and that they had refused to grant any warrants of distress, without first summoning the party.—*Lee* C. J. A writ of *mandamus* will not give the justices any power they had not before, and therefore it is to be considered what powers stat. 43 *Eliz. c.* 2. § 4. gives them; and in that there is no direction that the party shall be summoned to shew cause: nothing appears upon the affidavits that this is such a rate as a distress ought to be granted upon; but the whole is, that persons applying for the warrant did first refuse to take out a summons, which to me does not appear a sufficient cause why the *mandamus* should not go; if the justices have sufficient reason why they did not grant the warrant, it will appear upon the return of the *mandamus*. The other judges concurred. *Mandamus* granted.

A summons must precede a warrant of distress for a poor's rate.

In *Rex* v. *Benn & Church*, *H.* 35 *Geo.* 3. 6 *T. R.* 198. 1 *Bott*, 261. 1 *Nol. P. L.* 254. 256. Against a rule for a *mandamus* to the defendants, who were justices for *Cumberland*, to grant warrants of distress to levy several sums of money on different persons who had refused to pay a poor rate for the township of *Whitehaven*, the answer was, that there should have been a previous

summons by the magistrates to the respective persons charged with having refused to pay, which had not been issued in this case.— *Bearcroft* in support of the rule, relied on the above case of *Rex* v. *Justices of Middlesex.*—Ld. *Kenyon* C. J. I confess I cannot subscribe my assent to the decision in the case cited. The payment of a poor rate, unless it be set aside, must be enforced: and if the magistrates will not issue a summons to the person who refuses to pay the rate, the Court will grant a *mandamus* to compel them to do it: but a summons must precede a warrant of distress, which is in the nature of an execution. On the summons, the party may shew a sufficient reason to the magistrates why a warrant of distress should not issue; as for instance, that he has already paid the assessment to one of the parish officers who has not accounted for it. But it is an invariable maxim in our law, that no man shall be punished before he has had an opportunity of being heard: whereas if a warrant of distress were to be issued, without any previous summons, the party would have no opportunity of shewing cause why the execution should not issue against him. But the next day the *Court* granted a rule for a *mandamus* to the magistrates "to receive such informations and complaints as shall be laid before them against persons refusing to pay the sums assessed upon them, for the relief of the poor of the township of *Whitehaven*, and to proceed thereupon to levy the same." Rex v. Benn.

Where defendants, in order to levy a poor's rate under a warrant of distress, granted by two magistrates, broke and entered the house and broke the windows, &c.: Held that they might be sued in trespass without a previous demand of the perusal and copy of the warrant, according to stat. 24 G. 2. c. 44. § 6.

Bell v. *Oakley and Others, H.* 54 *G.* 3. 2 *M.* & *S.* 259. 1 *Nol. P. L.* 263. Trespass for breaking and entering the plaintiff's dwelling-house, breaking the doors and windows, and taking and carrying away his goods. Plea, not guilty. At the trial before Lord *Ellenborough* C. J. at the *Kent* Summer Assizes, 1813, it appeared that the defendants, two of whom were the churchwardens, four the overseers, and two constables of the parish of *Deal*, together with the other defendant acting in their aid, went to the house of the plaintiff, who was an inhabitant of *Deal*, carrying with them a warrant granted by two magistrates, and directed to the said churchwardens and overseers, to distrain the plaintiff's goods for non-payment of a poor's rate. Having knocked at the door, and being informed at the next house that the plaintiff was from home, one of the defendants jumped into the front area, and tried to get in at the cellar but failed; in the attempt, however, some windows were broken. They then proceeded to the back part of the house, took the fastening out of a window, and got into the wash-house. After continuing there some time, and having found nothing within, the inner door being locked, they returned, and took away some planks and other articles which were lying in the garden. A verdict was found for the plaintiff, damages seven guineas, with leave for the defendants to move to enter a nonsuit, on the ground of there not being any proof of a demand of the copy of the warrant as required by stat. 24 *Geo.* 2. *c.* 44. § 6. A rule *nisi* to that effect was accordingly obtained in the last term. And now after the report had been read, Lord *Ellenborough* C. J. referred to *Money* v. *Leach* (3 *Burr.* 1742. 1 *Black. Rep.* 555.), and enquired how the rule could be supported consistently with that decision. In support of the rule this distinction was taken, that in that case the parties acted wholly without the authority of the warrant, for they executed the warrant

Bell v. Oakley. upon a person who did not correspond with the description in it; whereas here the defendants acted in partial execution of the warrant, though it must be admitted they exceeded its authority; but still they were not wholly unauthorised. And they cited *Price* v. *Messenger* (2 *Bos. & Pull.* 158.) to shew that an officer may be entitled to the protection of the statute, where he has exceeded the authority delegated to him by the magistrate.—Lord *Ellenborough* C. J. The case of *Money* v. *Leach* decides that the defendant in order to avail himself of the objection upon the statute must shew that he acted in obedience to the warrant; in that case the officers apprehended a different person from that described in the warrant, and therefore not in obedience to the warrant; and Mr. *Yorke*, the then attorney-general, who was to have argued on behalf of the officers, gave up the point upon the second argument as being too great a difficulty for him to encounter. Here the defendants so far from shewing that they acted in obedience to the warrant commence by an unauthorised course of proceeding; it was a trespass in them *ab initio*; and I do not see how after the case of *Money* v. *Leach*, they can stir this objection. That was a case of much public interest, and was decided upon great deliberation, and the matter was upon the record. If this had been a distinct subsequent trespass of the defendants, it might have presented a different question.—*Bayley* J. In *Price* v. *Messenger*, the defendant, so far as he acted in obedience to the warrant, was under the protection of the statute, but he was holden liable for the seizure, which was not made in obedience to the warrant.—*Dampier* J. The case of *Money* v. *Leach* decided, that where the justice cannot be liable, the officer is not within the protection of the statute. In this case suppose notice had been delivered to the justice, for what could he have tendered amends? In *Price* v. *Messenger*, the justice might have been proceeded against upon the warrant. *Per Curiam.* Rule discharged.

Novello v. *Toogood*, *E.* 1823. 1 *B. & C.* 554. Where the servant of an ambassador did not reside in his master's house, but rented and lived in another, part of which he let in lodgings, the court of K. B. held that his goods in that house not being necessary for the convenience of the ambassador were liable to be distrained for poor-rates.

The privilege of an ambassador extends only to what is necessary to the personal convenience, the dignity and the religion of the ambassador himself. *S. C.*

A. A.

(A.A.) Notice of Appeal against a Poor's Rate.

[See 41 *G.* 3. U.K. *c.* 23. § 4. *ante*, p.138.]

To the Churchwardens and Overseers of the Poor of the Parish of *C.* in the County of *S.*

THIS is to give notice to you and every of you, that I, W. F. *being an inhabitant and occupier of certain lands and tenements in the parish of* C., *and being rated as such in a certain rate and assessment, intitled,* " *An assessment for the necessary relief,* &c." *do intend at the next general quarter sessions of the peace to be holden in and for the said county of* S., *at* I. *in the said county,*

Here set out the title.

to try a certain appeal by me the said W. F., *as appellant, lodged and entered at the last general quarter sessions of the peace holden at* I. *aforesaid, in and for the county aforesaid, against the said rate or assessment; and that the grounds of such appeal are, that* B. M., I. E., *&c. &c. are in the said rate or assessment respectively under-rated in respect of the yearly value of their respective messuages, lands, tenements, and premises by them occupied in the said parish of* C.; *and also that I the said* W. F. *am in the said rate or assessment over-rated in respect of the yearly value of the lands, tenements, and premises by me occupied in the parish aforesaid; and also that it doth not appear in and by the said rate or assessment in respect of what property the said rate is made and assessed upon me the said* W. F.; *and also that the said rate or assessment doth not appear to be made for the relief of the poor of the said parish of* C., *as in the title thereto is alleged, but for other purposes; of all which premises you the said churchwardens and overseers are hereby desired to take notice.*

Here state the names of the persons who are under-rated.

Witness, ——— (Signed) W. F.

(A.) Information for non-payment of a Poor Rate, made before one Justice, to summon before two others, according to stat. 3 G. 4. *c.* 23. § 2. *Y. C. P.* 107. A.

[43 Eliz. c. 2. § 4. 17 Geo. 2. c. 38. § 7. 54 Geo. 3. c. 170. § 12. *ante*, p. 146. 3 Geo. 4. c. 23. § 2.]

County of ——— } *THE information and complaint of* O. P. *overseer of the poor of the parish of ——— in the said county, made on oath before me,* J. P. *esquire, one of his majesty's justices of the peace in and for the said county, the ——— day of ———, in the year of our Lord one thousand eight hundred and ———: who says, that in and by a rate and assessment made, assessed, allowed, and published according to the statutes in that case made and provided,* A. O., *an inhabitant and occupier* [or, *occupier* only, if such is the case], *of premises,* [or, as the case may be,] *in the said parish of ———, was duly rated and assessed for and towards the necessary relief of the poor of the said parish for this present year,* [or, *the last year,* as the case may be,] *in the sum of ———, and that the said sum hath been lawfully demanded of the said* A. O., *who hath refused and doth refuse to pay the same. Whereupon he the said* A. O., *prayeth that the said* A. O., *may be summoned to answer the complaint before two of his majesty's justices of the peace for the said county.*

Before me,
J. P.

(B.) The form of the Summons on Non-payment of Rate may be thus: (*a*) B.

County of ——— { To *A. O.* of the parish of ——— in the said county, yeoman.

WE whose names are hereunto set and seals affixed, two of his majesty's justices of the peace in and for the said county,

(*a*) This and the following form (C.) may be easily altered for one justice according to stat. 3 G. 4. c. 23. § 2. Vol. I. *tit.* Conviction.

one whereof is of the quorum, *do hereby summon you personally to appear before us at the house of —— in —— in the said county, on —— the —— day of —— at the hour of —— in the forenoon of the same day, to shew cause why you refuse to pay the sum of —— duly rated and assessed upon you in the rate or assessment made for the relief of the poor of the said parish for this present year; otherwise we shall proceed as if you had appeared. Given under our hands and seals the —— day of —— in the year of our Lord* 18—.

C. (C.) And then the Warrant of Distress thereupon may be thus:

County of —— } To the Churchwardens and Overseers of the poor of the parish of —— in the said county.

WHEREAS in and by a rate and assessment dated the —— day of —— made, assessed, allowed, and published according to the statutes in that case made and provided, A. O. *an inhabitant and occupier of a house in the said parish of —— was duly rated and assessed for and towards the necessary relief of the poor of the said parish for this present year in the sum of* 3s. *And whereas it duly appeareth unto us, two of his majesty's justices of the peace in and for the said county, (one whereof is of the* quorum,) *as well upon the oath of* O. P. *overseer of the poor of the said parish, as otherwise, that the said sum of* 3s. *hath been lawfully demanded of the said* A. O., *and that he the said* A. O. *hath refused and doth refuse to pay the same: And whereas the said* A. O. *having appeared before us in pursuance of our summons for that purpose, hath not shewed to us any sufficient cause why the same should not be paid:* [Or, *And whereas it hath been duly proved to us upon oath, that the said* A. O. *hath been duly summoned to appear before us the said justices to shew cause why the same should not be paid, but he the said* A. O. *hath neglected to appear according to such summons, and hath not shewed to us any sufficient cause why the same should not be paid;*] *These are therefore to require you forthwith to make distress of the goods and chattels of him the said* A. O. *And if within the space of* [four] *days next after such distress by you taken, the said sum, together with reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale that you detain the said sum of ——, and also your reasonable charges of taking, keeping, and selling the said distress; rendering to him the said* A. O. *the overplus on demand. And if no such distress can be made, that then you certify the same unto us, to the end that such further proceedings may be had therein as to law doth appertain. Given under our hands and seals this —— day of ——, in the year of our Lord ——.*

J. P. (L.S.)
K. P. (L.S.)

(D.) Overseer's Return of want of Distress to be indorsed on the back of the Warrant. D.

[43 Eliz. c. 2. § 4. *post*, p.154.]

County of ——— } O. P., *one of the overseers of the poor of the within-named parish of* ———, *maketh oath, this* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———, *that he has used his best endeavours to levy the sum in the within-mentioned warrant, on the goods and chattels of the said* A. O., *but that no sufficient distress can be found whereon to levy the same.*

Sworn before us, two [or, *me, one*] *of his majesty's justices of the peace in and for the county of* ——— } J. P. K. P.

(E.) Commitment thereon when no Distress can be found. E.

[43 Eliz. c. 2. § 4. *post*, p.154. 3 G. 4. c. 23. § 2.]

County of ——— } To the constable of the parish of ———, and to the keeper of the common gaol, at ——— in the said county.

WHEREAS in and by a rate and assessment made, assessed, and published according to the statutes in that case made and provided, A. O., *an inhabitant and occupier of premises in the said parish of* ———, *was duly rated and assessed, for and towards the necessary relief of the poor of the said parish, for this present year, in the sum of* ———. *And whereas it duly appears unto us,* [or, as the case may be,] J. P. *and* K. P., *esquires, two of his majesty's justices of the peace, in and for the said county,* (*one whereof is of the* quorum,) *as well upon the oath of* O. P., *overseer of the poor of the said parish of* ——— *as otherwise, that the said sum of* ——— *has been lawfully demanded of the said* A. O., *and that the said* A. O. *has refused and does refuse to pay the same: And whereas the said* A. O. *having appeared before us,* [or, *the said justices,*] *on the* ——— *day of* ——— *last, in pursuance of a summons for that purpose, did not then shew unto us,* [or, *them,* as the case may be,] *any sufficient cause why the same should not be paid;* [or, *and whereas it has been duly proved to us* [or, *the said two justices,*] *upon oath, that the said* A. O. *was duly summoned to appear before us* [or as the case may be], *the said justices on the* ——— *day of* ——— *last, to shew cause why the same should not be paid, but he the said* A. O. *neglected to appear according to such summons, and did not, and has not shewn to us* [or, *to them*] *any sufficient cause why the same should not be paid:*] *And whereas on the said* ——— *day of* ——— *last, we* [or, *they*] *did issue our* [or, *their*] *warrant, to the churchwardens and overseers of the poor of the said parish of* ———, *to levy the said sum of* ——— *l. by distress and sale of the goods and chattels of him the said* A. O., *and to apply the same according to law: And whereas it duly appears unto us,* [or, *me,* J. P. *esquire, one of his majesty's justices of the peace in and for the said county,* as the case may be, one justice being by stat. 3 *G.* 4. *c.* 23. § 2., declared competent to proceed when the adjudication has been already made by two,] *as well upon the oath of* O. P., *overseer of the poor of the parish of* ———,

aforesaid, as otherwise, that he the said overseer of the poor has used his best endeavours to levy the said sum on the goods and chattels of him the said A. O. *as aforesaid, but that no sufficient distress can be had whereon to levy the same: These are therefore to command you the said constable of the parish of* ——— *aforesaid, to apprehend the body of the said* A. O., *and him safely to convey to the common gaol at* ——— *in the said county, and there deliver him to the said keeper thereof, together with this precept. And we,* [or *I*, as the case may be,] *do hereby command you the said keeper of the said common gaol, to receive into your custody in the said common gaol, the said* A. O., there to remain without bail or mainprize, until payment of the said sum. (*a*) *Given under our hands and seals* [or, *my hand and seal*, as the case may be,] *the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* .

J. P. (L.S.)
K. P. (L.S.)
or, J. P. (L.S.)

17 G. 2. c. 38. Distress shall not be deemed unlawful for want of form in the proceedings.

And by stat. 17 *Geo.* 2. *c.* 38. § 8, 9, 10., Where any distress shall be made for money justly due for relief of the poor, the distress itself shall not be deemed unlawful nor the parties making it be deemed trespassers for any defect or want of form in the warrant for the appointment of overseers, or in the rate, or in the warrant of distress thereupon; nor shall the parties distraining be deemed trespassers *ab initio* on account of any irregularity which shall be afterwards done by the parties distraining; but the party aggrieved by such irregularity may recover full satisfaction for the special damage, and no more, in an action of trespass, or on the case. But where the plaintiff shall recover in such action he shall be paid his full costs. But no plaintiff shall recover in any action for any such irregularity, if tender of amends hath been made by the party distraining, before such action brought

43 El. c. 2. Commitment for want of distress. D. E.

By stat. 43 *El. c.* 2. § 4. *In defect of such distress,* (D. p.152.) *it shall be lawful for two such justices to commit* (E. p.152.) *such persons to the common gaol, there to remain, without bail or mainprize, until payment of the said sum.*

17 G. 2. c. 38. Arrears to be levied by the succeeding overseers.

And by stat. 17 G. 2. *c.* 38. § 11. *If any person shall neglect to pay such overseers, the succeeding overseers shall levy the arrears, and shall reimburse their predecessors the same which are allowed to be due to them in their accounts.*

The person assessed dying before payment.

In case a person charged shall die before payment (which is a thing that must needs very frequently happen), it hath been doubted how far the deceased's goods in the hands of the executor or administrator are liable to answer the same. As in the case of *Stevens* v. *Evans* and others, *E.* 1 *Geo.* 3. 2 *Burr.* 1152. 1 *Blac. Rep.* 284. 1 *Bott,* 255. 1 *Nol. P. L.* 252. — *William Vesey* was assessed to the poor rate, and died intestate. Administration of his goods was granted to *John Stephens*, the plaintiff. After which, two justices executed a warrant, in which warrant the said assessment was recited; and in the said warrant it was also recited that it appeared to the justices on the oath of

(*a*) These words are copied *verbatim* from the stat. of Elizabeth.

the late overseer, that the sum assessed had been demanded of the said *William Vesey*, and (since his decease) of his widow and representative *Susannah Vesey*, and that they refused to pay the same; therefore the justices require the officer to distrain the goods and chattels of the late *William Vesey*. An action of trover was brought by *Stephens* the administrator, and a special case was stated for the opinion of the Court; and the question as stated was, Whether the distraining, and taking, and selling the cattle which were the goods of *William Vesey*, in the hands of the plaintiff his administrator, by virtue of the said warrant, was lawful, or not? After argument, Mr. J. *Dennison* said, The question is stated particularly upon this case; and is confined to the levying the money upon the representative of the person charged. I should think the event must have often happened in fact and experience. The practice is not stated. But however, the question is, What the law is? and not what the practice is. It is a rule, that upon a new statute which prescribes a particular remedy, no remedy can be taken but the particular remedy prescribed by the statute. Therefore, clearly, no action of debt will lie for a poor rate. The remedy given by the act of the 43 *El.* must be considered with analogy to other like cases. This statute considers the person rated and refusing to pay, as an offender. And it gives no authority but to distrain the goods of the offender. Therefore no goods are liable to be distrained, by the words of this act, but the goods of the offender himself. I never apprehended, that the goods of the person assessed to the rate can be charged in the hands of the representative. And therefore (as at present advised) I should think that this action will lie for taking them. I agree that this is in the nature of an execution; but yet it is personal; and I do not know that it is a *lien* upon the assets.——Mr. J. *Wilmot* concurred; and said, he had no doubt about it. He thought the intention of the special case, which states a particular question, appeared to be, to submit this question only to the Court. As to the objections that have been made to the *rate*; the first is of no great importance: For though you cannot make a rate to reimburse overseers; yet the overseer may immediately, whilst in office, reimburse himself out of the next money raised for the rate. As to the second, he said, he believed that whatever the law might be, the practice was, not to make these rates monthly. On the merits; It is not stated in the *case*, that a demand was made even upon *Vesey* (the person assessed), and that he refused payment; though it is so recited in the *warrant*, But that is not material. For I have not the least doubt, but that the representative ought to have been convened before the justices, and asked what he had to say why he should not pay the rate assessed upon *Vesey* his intestate. The case seems to be like a *scire facias* upon a judgment: Upon which, execution cannot be used out against the representatives, without asking them what they have to allege why it should not be taken out. At the time of the *teste* of the warrant, they were the goods and chattels of the representative. If the teste had been prior to the death, they would have been the goods and chattels of the deceased. But if tested after his death, they are not his goods and

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No action of debt lies for a poor rate.

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chattels, but the goods and chattels of the representative. Therefore, if the money had been demanded of the representative, I should have had great doubt, whether this warrant and distress would not have been good. For I cannot think that by the death of the person charged with this rate, the assessment before made upon him and demanded of him would have been quite gone and lost to the parish, and could not have been any way come at. For though it may be a charge upon the person, yet it is a charge upon him in respect of the thing occupied. And though he be called an offender, if he refuse to pay it; yet he can be no otherwise considered as an offender, than every other debtor who refuses or neglects to pay his debts, and thereby renders his person and goods liable to be taken in execution, is so far treated as an offender, till he shall comply with the judgment awarded. And in experience I know it to be the case, that these payments by executors or administrators are often allowed to go in discharge of the assets of the testator or intestate; though I do not remember that it has been settled in what course of administration. Indeed it might be of too much consequence, to put it into the power of justices of the peace to determine upon the administration of assets, as to the course in which they are to be administered. In the case of *Wallis* and *Hewit* at *Guildhall*, at the sittings after *Hilary* term, *5 Geo.2.* before Ld. C. J. *Eyre*, in an action of trespass, two aldermen of *London* had made a warrant to distrain a man for a poor rate. The man died intestate. But before that, there had been a demand made upon him, and refused by him, and a warrant of distress granted upon his refusal. And then he died. *Eyre* C.J. held that a distress could not be made after his death; or, if it could, yet the representative ought to have been summoned: And he held the property to be changed. A case was made for the opinion of the court of common pleas: But I could not hear what became of it. Ld. C.J. *Eyre* was a great lawyer. It would be strange, that a distress should be taken upon a man's goods without hearing him. And it would make great confusion in the administration of assets. He may have paid or retained judgment debts, prior to this distress for the rate. — Mr. *Gould* was retained to take notes for the defendants. But he said, that if Mr. *Norton* insisted upon the want of a demand from the representative, he could not pretend to maintain the case on the part of the defendants. — Mr. J. *Dennison* and Mr. J. *Wilmot* said, That this was an essential circumstance. — And by the Court: (Ld. *Mansfield* C. J. and Mr. J. *Forster* being absent,) judgment was given for the plaintiff the administrator.

[Note. This case is here recited somewhat at large, in order to bring in as much light as may be upon the subject; especially as no other case hath occurred, wherein this point hath been considered. And this particular case, as appears, was determined on its own peculiar circumstances, namely, for want of summoning the administrator. So that the principal point seemeth yet to remain undetermined, which includes in it these particulars: 1. Where the warrant of distress is made out during the lifetime of the person assessed, whether the officers can follow the goods into the hands of the administrator or any other, without

taking notice of any person as executor or administrator? 2. Where the warrant of distress is not made out till after the death of the person assessed, whether, on summoning the administrator, and refusal by him, the officers can distrain the goods in the hands of such administrator? 3. Whether the administrator himself may be assessed in a succeeding rate, as for arrears; and on the assessment being confirmed at the sessions upon his appeal, whether distress may be made as of his own goods, and whether for defect of distress he may be committed? 4. In what course of administration such assessment shall be estimated? And if the administrator shall plead before the justices debts of a higher nature or insufficiency of assets, whether and how far the justices are to take notice of such plea, and how or in what manner they shall determine the same?]

In an action of replevin for taking the plaintiff's goods, the defendant avowed, as overseer of the poor, under the 43 Eliz. by virtue of a warrant of distress for 104l. 17s., due for several rates, one of which was quashed, on the ground, that the plaintiff was not an occupier with the parish where he was rated: Held, that as one of the rates was quashed, the warrant was void, and that the precise sum due for poor rates, should have been demanded from the plaintiff previous to the issuing of such warrant.

Hurrell v. *Wink, T.* 58 *G.* 3. 2 *Moore's C.P.R.* 417. 8 *Taunt.* 369. S.C. This was an action of replevin for making the plaintiff's goods. The defendant avowed the taking under stat. 43 *Eliz.*, as the overseer of the poor of the parish of *Rayleigh.* Plea *de injuria.* At the trial of the cause before *Wood* B. at the last assizes for *Essex*, it appeared that a warrant of distress was granted against the plaintiff on the 9th of *January* 1817, and executed on him on the 13th day of that month, as inhabitant or occupier of a farm in the parish of *Rayleigh*, in the county of *Essex*, for the sum of 104*l.* 17*s.* due for seven several poor rates and assessments. The plaintiff appealed to the last quarter sessions for that county, on the ground that he was not an inhabitant or occupier within the parish of *Rayleigh*, and on the appeals being called on, an objection was taken, on the ground that the notice was insufficient in point of time as to the first six rates, as the stat. 17 *G.* 2. *c.* 38. required an appeal to the next general quarter sessions, and as the warrant of distress was executed on the 13th of *January*, being only the day before the last quarter sessions for *Essex*, there was not even sufficient time to give notice of appeal to that session, on which the plaintiff abandoned the six first rates mentioned in the notice, and supported such notice as against the last, he having entered his appeal at the next session after that rate, and the last rate was quashed, on the ground that the plaintiff was not the occupier. Under these circumstances it was insisted, for the plaintiff, that the warrant of distress was void on the authority of the case of *Milward* v. *Caffin*, (2 *Blac. Rep.* 1330.), which was an action of replevin on a distress for a poor's rate, and *Gould* J. there said (2 *Black. Rep.* 1331.) that it had been fairly and candidly conceded in the argument, that where a warrant was to levy an aggregate sum, composed of several rates, if one of the rates were illegal, the whole warrant was void. The jury, however, found a verdict for the defendant, but the learned Baron reserved the point, as to the validity of the warrant, for the opinion of the Court. After argument, *Gibbs* C.J. held, that in this case it was necessary that the sum actually due from the plaintiff for poor rates, should be demanded previous to the levy, and that it was distinguishable from a distress for rent; that whatever might be due as the amount of rent, might be distrained, and that although a larger sum were distrained for than was actually due, that the lessor might still be supported; as if a distress were made for

Hurrell v. Wink.

three years' rent, and two only were due, still the avowant was entitled to recover the two. So, if a person bring an action for goods sold and delivered, to the amount of 100*l.*, still he may only be entitled to recover 40*l.* But in neither of these cases is a precise and previous demand necessary, as here, where the party distrained on, is entitled to know what sum is actually due for poor rates, previous to the issuing of the warrant under which the levy is made.— R. A.

Certiorari.

Rex v. *Uttoxeter*, *E.* 5 *Geo.* 2., 2 *Str.* 932. *Sett. & Rem.* 317. 1 *Bott*, 292. 2 *Nol. P.L.* 490. *3d edit.* Upon great debate, and search after precedents, it was held, that a *certiorari* would not lie to remove the poor-rate itself, the remedy being to appeal, or by action when a distress is taken, which will answer all the ends of justice in coming at an equal rate; whereas if the rate itself should be required to be sent up, great inconveniences and delays would follow.

Rex v. *The Justices of Salop*, *E.* 7 *Geo.* 2. 1 *Sess. Ca.* 201. 2 *Str.* 975. 1 *Bott*, 293. by the name of *Rex* v. *Shrewsbury*, 2 *Nol. P.L.* 490. *3d edit.* The true objection against a *certiorari*, is, that if rates were removable, the poor might be starved whilst the rates were depending; and therefore the Court, from the great inconvenience that would attend the removal of rates, have refused to do it.

11. Rate for taxing others in aid.

43 El. c. 2. Hundred contributory.

By stat. 43 *Eliz.* c. 2. § 3. *If the said justices do perceive that the inhabitants of any parish are not able to levy among themselves sufficient sums for the purposes aforesaid, then the said two justices* (1 Q.) *shall tax, rate, and assess as aforesaid, any other of other parishes, or out of any parish within the hundred to pay such sums to the churchwardens and overseers of the said poor parish, for the said purposes, as the said justices shall think fit.*

A vill is within the equity of the statute.

That the inhabitants of any parish are not able] *H.* 8 *An. Anon. Fol.* 25. 1 *Bott*, 348. 1 *Nol. P.L.* 241. The case was this; There were two vills in one parish, and the justices recite in their order, that one of the vills was very rich, and the other very poor; and further, that the vill which was rich, did not pay half so much to the poor, as the poor vill did. Objected, One vill ought not to contribute to another, because the statute mentions parishes only. 2. The reason given for charging the rich vill to contribute to the poor vill is uncertain; *viz.* because they do not pay half so much as the poor vill does, without shewing that either vill pays any thing to the poor.— By the Court: As to the first objection, surely this will come within the equity of the statute, though the statute only makes mention of *parishes:* and it is highly reasonable, that one vill should contribute to another in the same parish. But this order must be quashed on the second objection, for the uncertainty.

The *sessions* cannot rate in aid.

Then the said two justices] *Rex* v. *Griesley*, *T.* 2 *J.* 2. *Sett. & Rem.* 259. The *sessions* rated the adjacent parishes: Quashed; because the statute appoints it to be done by the two justices, and hereby they prevent an appeal.

The assessment

The said two justices shall tax, rate, and assess.] *St. Mary's* v.

St. Peter and Paul's in *Marlborough.* *T.* 12 *Geo.* 2. 2 *Str.* 1114. 1 *Bott.* 349. Two justices order the churchwardens and overseers of *St. Peter and Paul's* to assess, raise, and levy a sum towards the maintenance of the poor of *St. Mary's.* But the order was quashed by the Court; because the justices had delegated their power to the churchwardens and overseers; whereas by the statute they themselves are to make the rate on all, or on particular persons. must be by the justices, and they cannot delegate their power.

In this case, a *mandamus* was moved for to the justices, to make a rate for the support of the poor of the parish of *St. Mary's;* which was opposed, because the parish officers ought to make the rate, and the justices are only to sign it. To which it was answered, that this motion was grounded on this clause of the statute; and thereupon a *mandamus* was granted, directed to the justices; and as this is a matter of right, they ought to make a return. 16 *Vin. Abr.* 416. Mandamus.

And the justices are to make the taxation, and leave it to the churchwardens and overseers to levy it. 2 *Salk.* 480.

Any other of other parishes] *M.* 32 *C.* 2. Resolved, That the justices may impose the charge upon any of the inhabitants of the neighbouring parishes, and are not obliged to put a general tax upon the whole parish. *Comb.* 309. 1 *Vent.* 350. The rate in aid may be on particular persons.]

Rex v. *Boroughfen, T.* 12 *Geo.* 1. *Fol.* 29. 1 *Bott,* 351. 1 *Barnard. B. R.* 122. 1 *Nol. P.L.* 244, 245. There was a taxation of several persons in a parish: Objected, that it should be of all the persons in a particular place or parish. The Court thought it unreasonable, that several persons in a parish should be charged, and not all, but that the words of the act are very strong: and did not quash the order for this objection.

It has been decided also that it should appear by the order that the place on which the rate is made is not within the parish in aid of which it is assessed, and that this is necessary although the names of both appear on the face of the order and are different. S. C. 1 *Nol. P. L.* 246.

But query this? In *Rex* v. *St. Helen's, T.* 42 *Geo.* 3. 1 *Nol. P. L.* 246. (*n.*) It was cited to this point, when Ld. *Ellenborough* C. J. observed, that the diversity of name imports diversity of place, unless the contrary be shewn. And see *Anon. Fol.* 25. p. 157.

Within the hundred] *Boroughfen* v. *St. John's, T.* 9 *Ann. Fol.* 27. 1 *Bott,* 348. 1 *Nol. P.L.* 245, 246. Motion to quash an order of two justices; for that it doth not appear upon the order, that the parish which is charged to aid the parish that is not able to maintain its own poor, is within the same hundred. And quashed by the whole Court. It must appear in the order that the parish is within the same hundred.

St. Benedict v. *St. Peter's, H.* 8 *Ann. Fol.* 31. 1 *Bott,* 350. 353. 1 *Nol. P.L.* 246, 247. 11 *Mod.* 269. Motion to quash an order of two justices, which was made to assess the parishes of *St. Stephen* and *St. Mary Magdalen* in *Norwich,* in aid of the parish of *St. Benedict,* which was not able to maintain its own poor. Objection: These parishes are not in the same hundred; they are in the county of the city of *Norwich* where there is no hundred, so the justices have no jurisdiction.— And by *Holt.* C. J. The order must be quashed.

Any division which is equivalent to a hundred is within the equity of the statute.

Rex v. *The Tithing of Milland, E. Geo.* 2. 1 *Burr.* 576. 1 *Bott,* 354. 1 *Nol. P. L.* 242. Two justices tax the inhabitants of the tithing of *Milland* in aid of the parish of *St. Peter's Cheesehill,* in the same county. The sessions confirm the order, setting forth, that the tithing of *Milland,* and the parish of *St. Peter's Cheesehill,* both lie in the same *liberty of the soke* where the said parish lies. On referring it back to the sessions to be more particularly stated, it appeared (substantially) to be a hundred, though called by another name. And the Court held, they were not restrained to the particular word *hundred,* but it is sufficient if it be signified by any word equivalent. And the orders were affirmed.

Justices cannot rate in aid of a parish out of their jurisdiction.

In the case of *Rex* v. *T. Holbeche,* esq. *and Another,* 32 *Geo.* 3. 4 *T. R.* 778. 1 *Bott,* 354. 1 *Nol. P.L.* 243. It was determined, that county justices cannot rate a parish within their jurisdiction in aid of another parish, lying within a borough which has an exclusive jurisdiction.

The order must be for a time limited.

As the said justices shall think fit.] *Rex* v. *St. Mary's* in *Marlborough, E.* 12 *Geo.* 1. 2 *Stra.* 700. 1 *Bott,* 349. 1 *Nol. P. L.* 250. An order was made for a neighbouring parish to contribute *so long as we the said justices shall think fit.* — But by the Court: It must be quashed; for the discretion that is left in the justices, is not to make a perpetual order, which this would be.

The sum may be imposed in gross for a year.

Rex v. *Knightly, M.* 6 *W. Comb.* 309. 1 *Bott,* 347. 1 *Nol. P. L.* 245. A sum in gross was taxed upon a neighbouring parish for a whole year: which was objected to as unreasonable, because their ability may change: nevertheless the order was confirmed.

The order must be to raise a sum certain.

Rex v. *Telscombe, T.* 6 *Geo.* 1. 1 *Stra.* 314. 1 *Bott,* 348. 1 *Nol. P. L.* 245. By the Court: The order for the contributory parish to make a rate at 6*d.* in the pound is ill for uncertainty; it should have been to raise such a sum certain. Quashed.

The sum may be in gross.

Case of the parish of *St. Peter and Paul* in *Marlborough. T.* 12 *Geo.* 2. 2 *Stra.* 1114. 1 *Bott,* 349. 1 *Nol. P. L.* 244. Two justices, reciting the inability of the parish of *St. Mary* to maintain its own poor, order the parish of *St. Peter and Paul* to contribute 60*l.* for the maintenance of the poor of the other parish: An objection being made to their ordering such a gross sum, the court held it in that respect to be well.

County contributory.

And by stat. 43 *Eliz. c.* 2. § 3. If the said hundred shall not be thought by the said justices able and fit to relieve the said several parishes not able to provide for themselves as aforesaid, then the justices at their general quarter sessions, or the greater number of them, shall rate and assess, as aforesaid, any other of other parishes, or out of any parish within the county, &c.

Rex v. *Percivall, T.* 3 *Geo.* 1. 1 *Stra.* 56. 1 *Bott,* 352. 1 *Nol. P. L.* 247. 249. Order of sessions, reciting that the parish is not able to maintain its own poor, nor any other parish within the hundred to contribute, therefore the justices at the sessions tax other parishes in another hundred within the same county. It was moved to quash it, and insisted that the statute gives no authority to the sessions to charge people out of the hundred, till two justices have enquired whether any parish in the hundred can contribute: The first application to be to two justices, and

the second to the sessions.—*Parker* C. J. I do not see to what purpose it would be, for the two justices to make an order, only to adjudge that no parish within the hundred is able to contribute. We will presume the sessions is satisfied of that, and if the two justices should make such an adjudication, yet the sessions must enquire into the truth of it; and if no order appear which charges any parish within the hundred, it is a sufficient ground for the sessions to act. If the two justices had charged any parish within the hundred, that would have stopped the sessions from proceeding; and the sufficiency of the hundred depends on this, whether two justices have ever charged the hundred.——*If the said hundred shall not be thought by the said justices able,*—that is, if the two justices do not adjudge it so. If two justices should adjudge the hundred not able, yet if other two justices adjudge the contrary, their charge would be good, and the sessions be ousted of their jurisdiction, notwithstanding the first adjudication.—*Eyre* J. Here are two jurisdictions, that of the two justices, and that of the sessions, and both are original jurisdictions. They are different in all respects, for the two justices have no power out of the hundred, nor the sessions within it. There need be no appeal from any adjudication of two justices, for that would be to appeal from a nullity. And the order was confirmed. R. v. Percivall.

And in *Rex* v. *Eastchurch, H.* 9 *W.* 1 *Bott,* 350. 1 *Nol. P. L.* 218. It was decided by *Holt* C. J. that the sessions cannot make an original order upon a parish within the hundred.

§ III. Of the Relief and ordering of the Poor.

This subject may be classed under seven distinct heads; as,

1. *Of the liability of parents and children to maintain each other.*
2. *Of the order of maintenance.*
3. *Of persons deserting their families.*
4. *Of the mode of relieving and ordering the poor, and herein of relief to debtors in gaols, not being county gaols.*
5. *Of the regulation of parish vestries under stats.* 58 G. 3. c. 69. *and* 59 G. 3. c. 85.
6. *Of select vestries under authority of stat.* 59 G. 3. c. 12.
7. *Incorporated districts.*

1. How far Parents and Children are liable to maintain each other.

Stat. 43 *Eliz. c.* 2. § 7. Enacts, "that the father and grandfather, and the mother and grandmother, and the children of every poor, old, blind, lame, and impotent person, or other poor person not able to work, being of a sufficient ability, shall, at their own charges, relieve and maintain every such poor person in that manner, and according to that rate, as by the justices of peace of that county where such sufficient persons dwell, or the greater number of them, at their general quarter sessions, shall be assessed; upon pain that every one of them shall forfeit twenty shillings for every month which they shall fail therein." 43 El. c. 2. § 7. Poor persons relieved by their parents or children.

§ 2. & 11. Which penalty shall go to the use of the poor of the same parish, and be levied by some or one of the churchwardens or overseers by warrant from two such justices (1 Q.) by distress; or, in defect thereof, any two such justices may commit the offender to the common gaol, there to remain without bail or mainprise, till the said forfeitures shall be paid.

59 G. 3. c. 12. Justices in *petty* sessions empowered to order relief by parents, &c. as justices in *quarter* sessions by 43 El. c. 2.

And by stat. 59 *Geo.* 3. *c.* 12. § 26. reciting, that whereas by "an act passed in the 43d year of the reign of queen *Elizabeth*, for the relief of the poor, it was enacted, that the father and grandfather, and the mother and grandmother, and the children of every poor, old, blind, lame, and impotent person, or other poor person not able to work, being of a sufficient ability, shall at their own charges relieve and maintain every such poor person, in that manner and according to that rate as by the justices of the peace of that county where such sufficient persons dwell, or the greater number of them, at their general quarter sessions, shall be assessed: And that it is expedient to extend the power which is by the said act given to justices in their general quarter sessions, to justices in petty sessions:" it is enacted, "that it shall be lawful for any two or more of H. M.'s justices of the peace for the county or other jurisdiction in which any such sufficient person shall dwell, and they are hereby empowered, in any petty session, to make such assessment and order for the relief of every poor, old, blind, lame, impotent, or other poor person not able to work, upon and by the father, grandfather, mother, grandmother, or child (being of sufficient ability) of every such poor person, as may by virtue of the said act be made by the justices in their general quarter sessions; and that every such assessment and order of two or more justices in any petty sessions shall have the like force and effect as if the same were made by the justices in their general quarter session; and the disobedience thereof shall be punishable in like manner."

A man is not obliged to maintain his wife's children by a former husband after their mother's death.

Father and mother] *Q.* v. *Clentham*, *T.* 9 *Ann. Fol.* 39. 1 *Bott*, 371. 2 *Nol. P.L.* 232. *3d edit.* It was moved to quash an order upon the father-in-law, to maintain his wife's daughter, his wife being dead.—By the whole Court: The husband ought to provide for the daughter-in-law during the wife's life, in the right of his wife; but when the wife dies, the relation is dissolved, and he is not by any means obliged to provide for the daughter-in-law after her mother's death.

So in Q. v. *St. Botolph's Aldgate*, *E.* 10 *Ann. Fol.* 42. 1 *Bott*, 372. 2 *Nol. P.L.* 231. *3d edit.* The single question was, Whether the husband shall be chargeable to maintain his wife's children by a former husband? And it was resolved he was during the wife's life, in her right, but not after.

The order should be upon the husband.

There was an order upon the mother, who was married to a second husband, to maintain her children which she had by the former husband.—— But by the Court; A feme covert cannot be charged, but they ought to have charged her husband. *Fol.* 44.

The statute of Eliz. extends only to natural relations.

But notwithstanding the above, in the case of *Tubb* and others v. *Harrison* and another, *M.* 31 *Geo.* 3. 4 *T.R.* 118. 1 *Bott*, 376. 2 *Nol. P. L.* 231, 232. *3d edit.* Which was an action on a covenant, in which the defendants, who were father and son, (after reciting

that differences had arisen between the son and his wife, and that they had agreed to live separate) covenanted *inter alia* to pay all the debts contracted by her, *which her husband was by law liable to pay*. One of the breaches assigned was, that they had refused to repay money laid out for board, lodging, and other necessaries for her infant son by a former husband. — Ld *Kenyon* C. J. on the authority of *Rex* v. *Munday*, 1 *Str.* 190. *post*, p. 163. in which an order of maintenance was reversed by the Court, because the stat. of *Eliz.* extends only to natural relations, was of opinion that the husband was not liable to pay the expences of maintaining the wife's child by a former husband, although the wife were then living, and ordered those articles in the account to be disallowed.

One who marries a widow, having children by her former husband, is not bound to maintain such children, though they were maintained by the widow before her second marriage, when her second husband acquired her former means. Therefore if the second husband maintain such children, it is a good consideration for a promise by them when they come of age to repay the expence of their maintenance respectively: especially where the second husband was a man of small substance, and the children had a competent provision to receive when they came of age, which was to accumulate for them in the mean time, and he made no application to chancery for an allowance out of the fund, as he might have done. *Cooper* v. *Martin*, *T.* 43 *Geo.* 3. 4 *East*, 76. 1 *Bott*, 377. 2 *Nol. P.L.* 231, 232. 3*d edit.*

Son's wife, the son being run away, not to be maintained by the son's father.

Rex v. *Kempson*, *M.* 7 *Geo.* 2. 2 *Str.* 955. 1 *Bott*, 373. 2 *Nol. P.L.* 231, 232. 3*d edit.* It was moved to quash an order upon the father to pay a certain sum weekly to his son's wife, his son having run away from her as soon as he married her, and she having had a child in the mean time. To this order two exceptions were taken: First, that it appears the son's wife was an adulteress; and therefore the husband himself would not have been bound to maintain her, much more the husband's father could not. To this it was answered, and allowed by the Court, that whatever effect this act of the wife might have upon the husband, it could not have any upon the parish. Secondly, it was objected, that the statute extends only to natural relations, and for this purpose was cited the case of *Rex* v. *Munday* (hereafter following); and the Court were of opinion that this objection was fatal, and that the act doth not extend to relations in law. 2 *Barnard.* 329. 364. Note; Sir *John Strange* in his report of this case says, that the order was for the father to maintain his son's wife, after a divorce *a mensâ & thoro*, for adultery.

Grandfather and grandmother.

Grandfather and grandmother] *Rex* v. *Reeve*, *M.* 7 *Car.* 1. 2 *Bulstr.* 344. 1 *Bott*, 362. 2 *Nol. P.L.* 231. 3*d edit.* The *reputed* grandfather or grandmother are not within the statute; for a bastard is *filius populi*.

Though the father be living, yet, if he be unable, the grandfather, being of ability, may be compelled to keep the grandchild and also to pay so much money as the justices shall think reasonable for the time past. *M.* 6 *Ann. Q.* v. *Joice*, 16 *Viner*, 423. 1 *Bott*, 372. 2 *Nol. P.L.* 232. 234.

A son-in-law is not obliged to

And children.] *Rex* v. *Munday*, *T.* 5 *Geo.* 1. 1 *Str.* 190. 1 *Bott*,

maintain his wife's mother. 373. 2 *Nol. P.L.* 232. 3*d edit.* Order reciting that *Munday* had a good fortune with his wife, and that her mother was poor, therefore he is ordered to provide for her. By *Pratt* C. J. The cases which have hitherto been, were either where the judges were divided, or the matter came not directly in question, or was only a case at the Judge's chamber. It never came judicially before the whole Court till now. And as it is *res integra*, on consideration we are all of opinion, that the son-in-law is not bound, either within the words or intent of the statute, which provides only for natural parents. By the law of nature a man was bound to take care of his own father and mother. But there being no temporal obligation to enforce that law of nature, it was found necessary to establish it by act of parliament, and that can be extended no farther than the law of nature went before; and the law of nature doth not reach to this case. And the order must be quashed. This case was acknowledged by Ld. *Kenyon*, in *Tubb* v. *Harrison*, *ante*, 162.

Grandchildren. In the case of *Walton* v. *Spark*, *E.* 7 *W. Sett. & Rem.* 210. 1 *Bott*, 370. (by the name of *Waltham* v. *Sparkes*,) 2 *Nol. P. L.* 232. 3*d edit.* *Holt* C. J. said, that the word *children* in the statute extends to *grand-children;* because there is the same natural affection.

But no case hath occurred, wherein the same hath been judicially determined. And perhaps there may be some doubt as to this point. Natural affection descends more strongly than it ascends. And it is observable, that whereas the statute of the 39 *Eliz. c.* 3. did only enact that *parents* and *children* should mutually maintain each other, this statute of the 43 *Eliz.* enlarging this branch, extends it to *grandfathers* and *grandmothers*, but doth not specify *grandchildren;* by which it may seem that the parliament did not intend that the obligation should extend to them.

(A.) Overseer's Complaint, in order to have an Order of Maintenance on Parents, &c.

County of } ——— } *AT a petty sessions of the peace of our lord the king, held at ——— in the said county, the —— day of ——— in the year of our Lord one thousand eight hundred and ———, before the undersigned justices of our said lord the king, assigned to keep the peace of our said lord the king, in and for the county aforesaid: An application is made to us the said justices, by the undersigned overseer of the poor of the parish of ——— in the county of ———, on behalf of the churchwardens and overseers of the poor of the said parish, to have an order on* A. P. *of ——— in the county of ———, ——— for him to maintain his ——— who is poor and unable to work for himself, and chargeable to the said parish of ——— he the said* A. P. *being a person of sufficient ability to provide for his said ———,*

A. O.
Overseer of the poor.

Exhibited before us, J. P.
S. P.

(B.) Order on a Parent or Child to give Relief, &c.

B.

County of ——— } *THE order of* J. P. *and* S. P. *esquires, two of his majesty's justices of the peace in and for the said county, one whereof is of the* quorum, *made at a petty sessions held at ——— in the said county, the —— day of ——— in the year of our Lord one thousand eight hundred and ———. Upon an application to us the said justices, at the said petty sessions, by the churchwardens and overseers of the poor of the parish of ——— in the county of ———, to have an order made on* A. P. [or, A. C.] *of ——— in the said county of ———, ——— for him to maintain his ——— who is poor and unable to work so as to maintain and support himself and chargeable to the said parish of ——— he the said* A. P. [or, A. C.] *being a person of sufficient ability to maintain and provide for his said ———. And the said* A. P. [or, A. C.] *having been duly summoned to appear before us the said justices, at the said petty sessions, to the end that we might examine into the cause and circumstances of the premises, but when and where he has not shown any sufficient cause why such order should not be made, and we having heard the parties so complaining, and duly considered the circumstances of the said complaint as well as the want of any adequate defence on the part of the said* A. P. [or, A. C.] *Do adjudge and determine, that the said ——— is poor and unable to work so as to maintain and support himself, and actually chargeable to the said parish of ——— and that the said* A. P. [or, A. C.] *is a person of sufficient ability to maintain and provide for his said ———. And therefore we do order, that the said* A. P. [or, A. C.] *shall and do forthwith, upon notice of this our order, pay or cause to be paid to the churchwardens and overseers of the poor of the said parish of ——— for the time being, or to some or one of them, weekly and every week from this present time, the sum of ——— for and towards the sustentation, relief, maintenance, and support, of the said ——— for and during so long time as the said ——— shall be chargeable to the said parish of ——— or until the said* A. P. [or, A. C.] *shall be legally directed to the contrary. Given under our hands and seals, at ——— aforesaid, the day and year first above written.*

J. P. (*L. S.*)
S. P. (*L. S.*)

(C.) Information of an Overseer against a Parent or Child for disobeying an Order of Maintenance, &c.

County of ——— } *THE information and complaint of* A. O., *one of the overseers of the poor of the parish of ——— in the county of ———, made on oath before us* J. P. *and* S. P., *esquires, two of his majesty's justices of the peace in and for the county of ——— at a petty sessions held at ——— in the said county of ——— the ——— day of ——— in the year of our Lord one thousand eight hundred and ———. Who on his oath aforesaid saith, that by an order under the hands and seals of ——— and ——— two of his majesty's justices of the peace in and for the county of ——— one whereof is of the* quorum, *made at a petty sessions held at ——— in the said county of ———, the ——— day of ——— in the year of our Lord one thousand eight hundred and ———,*

upon an application to the said last-mentioned petty sessions by the churchwardens and overseers of the poor of the said parish of ——— *to have an order made on* A. P. *of* ——— *in the said county of* ———, *for him to maintain his* ——— *who is poor and unable to work so as to maintain and support himself, and chargeable to the said parish of* ———, *the said* A. P. *being a person of sufficient ability to provide for his said* ———. *He the said* A. P. *was ordered, upon due notice thereof, to pay or cause to be paid to the churchwardens and overseers of the poor of the said parish of* ——— *for the time being, or to some or one of them, weekly and every week, from the date of the said order, the sum of* ——— *for and towards the sustentation, relief, maintenance, and support of the said* ——— *for and during so long time as the said* ——— *shall be chargeable to the said parish of* ——— *or until the said* A. P. *shall be legally directed to the contrary; but that notwithstanding he the said* A. P. *has had due notice of the said order, yet he has not observed nor performed the said order for and during* ——— *months; that is to say, from the* ——— *day of* ——— *in the year of our Lord one thousand eight hundred and* ———, *to the* ——— *day of following, whereby he the said* A. P. *has subjected himself to the penalty and forfeiture of twenty shillings for each month, to go and be employed to the use of the poor of the said parish of* ——— *and towards a stock and habitation for them, and other necessary uses and relief. And thereupon he the said* A. O. *prays us the said justices first before named, that the said penalty may be levied by some or one of the churchwardens or overseers of the aforesaid parish of* ——— *by warrant of distress, and that justice may be done in the premises.*

A. O.

Before us, J. P.
S. P.

(D.) Warrant of Distress on a Parent or Child for disobeying an Order of Maintenance, &c.

To the churchwardens and overseers of the poor of the parish of ——— in the county of ———.

County of ——— } *WHEREAS by an order under the hands and seals of* ——— *and* ———, *two of his majesty's justices of the peace in and for the county of* ———, *one whereof is of the* quorum, *made at a petty sessions held at* ——— *in the said county of* ———, *the* ——— *day of* ——— *in the year of our Lord one thousand eight hundred and* ———, *upon an application to the said petty sessions by the churchwardens and overseers of the poor of the parish of* ——— *in the county of* ——— *to have an order made on* A. P. *of* ——— *in the said county of* ———, *for him to maintain his* ——— *who is poor and unable to work so as to maintain and support himself, and chargeable to the said parish of* ——— *the said* A. P. *being a person of sufficient ability to provide for his said* ———. *He the said* A. P. *was ordered, upon due notice thereof, to pay or cause to be paid to the churchwardens and overseers of the poor of the said parish of*

——— for the time being, or to some one of them, weekly and every week, from the date of the said order, the sum of ——— for and towards the sustentation, relief, maintenance and support of the said ———, for and during so long time as the said ——— shall be chargeable to the said parish of ——— or until the said A. P. *shall be legally directed to the contrary. And whereas it appears unto us* J. P. *and* S. P. *esquires, two of his majesty's justices of the peace in and for the said county of ———, at a petty sessions, held at ——— in and for the aforesaid county of ———, this ——— day of ———, in the year of our Lord one thousand eight hundred and ———, on the oath of* A. O. *one of the overseers of the poor of the parish of ——— aforesaid, that notwithstanding he the said* A. P. *has had due notice of the said order, yet he has not observed nor performed the said order for and during ——— months; that is to say, from the ——— day of ——— in the year of our Lord one thousand eight hundred and ———, to the ——— day of ——— following, whereby he the said* A. P. *has subjected himself to the penalty and forfeiture of twenty shillings for each month. And whereas the said* A. P. *has been duly summoned to appear before us, at this present petty sessions, to answer unto the said complaint, but has not shewn to us any sufficient cause why the said order has not been complied with, and why the said penalty of twenty shillings a month should not be levied by warrant of distress from us, or in defect thereof why he the said* A. P. *should not be committed to the common gaol, there to remain, without bail or mainprize, till the said forfeitures shall be paid: These are therefore to require you forthwith to make distress of the goods and chattels of him the said* A. P. *And if within the space of four days next after such distress by you taken, the said penalty, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale that you detain the amount of the said penalty, (being the sum of ———,) to go and be employed to the use of the poor of your said parish of ———, and towards a stock and habitation for them, and other necessary uses and relief, and also that you detain your reasonable charges of taking, keeping, and selling the said distress, rendering to him the said* A. P. *the overplus on demand. And if no such distress can be made, that then you certify the same unto us, to the end that such farther proceedings may be had therein as to law doth appertain. Given under our hands and seals at ——— aforesaid, this ——— day of ——— in the year of our Lord one thousand eight hundred and ———.*

J. P. (*L. S.*)
S. P. (*L. S.*)

(E.) Commitment of a Parent or Child for disobeying an Order of Maintenance, &c. E.

County of ——— } To the constable of the parish of ——— in the said county, and to the keeper of the common gaol at ——— of the said county of ———.

WHEREAS by an order under the hands and seals of ——— and ——— two of his majesty's justices of the peace

, one whereof is of the quorum, made at a petty sessions held at ——— in the said county of ———, the ——— day of ——— in the year of our Lord one thousand d and ———, upon an application to the said petty sessions by the churchwardens and overseers of the poor of the parish of ——— in the county of ———, to have an order made the said county of ———, for ——— who is poor and unable to work so as to maintain and support himself, and chargeable to the said parish of ——— the said A. P. being a person of sufficient ability to provide for his said ———. He the said A. P. was ordered, upon due notice thereof, to pay or cause to be paid to the churchwardens and overseers of the poor of the said parish of ——— for the time being, or to some or one of them, weekly and every week, from the date of the said order, the sum of ——— for and towards the sustentation, relief, maintenance, and support of the said ——— for and during so long time as the said ——— shall be chargeable to the said parish of ——— or until the said A. P. shall be legally directed to the contrary; which said order having been disobeyed and complaint thereof made to ——— and ——— two of his majesty's justices of the peace for the said county of ———, on the ——— day of ——— in the year of our Lord one thousand eight hundred and , at a petty sessions then held at in the said county of by and upon the oath of A. O. one of the overseers of the poor of the said parish of ——— they the said last-mentioned justices did then and there issue their warrant to the churchwardens and overseers of the poor of the said parish of ——— to levy the said penalty (being the sum of ———) by distress and sale of the goods and chattels of him the said A. P. and to apply the same according to law. And whereas it duly appears unto us J. P. and S. P. esquires, two of his majesty's justices of the peace for the said county of ———, at a petty sessions held at ——— in the said county of ———, this ——— day of ——— in the year of our Lord one thousand eight hundred and ———, as well upon the oath of A. O. one of the overseers of the poor of the said parish of ——— as otherwise, that he the said overseer of the poor has used his best endeavours to levy the said sum on the goods of him the said A. P. as aforesaid, but that no sufficient distress can be had whereon to levy the same: These are therefore to command you, the said constable of ——— aforesaid, to apprehend the body of the said A. P. and him safely to convey to the common gaol of the said county of ———, at ——— in the said county last-mentioned, and there deliver him to the said keeper thereof, together with this precept. And we do hereby command you the said keeper of the said common gaol, to receive into your custody in the said common gaol, the said A. P. and him there safely to keep, without bail or mainprize, till the said forfeitures shall be paid; and for so doing this shall be your sufficient warrant. Given under our hands and seals, at ——— aforesaid, the ——— day of ——— in the year of our Lord one thousand eight hundred and ———.

J. P. (*L. S.*)
S. P. (*L. S.*)

2. Of the Order.

Of every poor, old, blind, lame, and impotent person, or other poor person not able to work] *St. Andrew's Undershaft* v. *Jacob Mendez de Breta, M.* 13 *W.* 1 *Ld. Raym.* 699. 1 *Bott*, 365. 2 *Nol. P.L.* 233. 3*d edit.* The defendant, being a Jew, had an only daughter, who was converted from Judaism, and embraced Christianity, whereupon the defendant turned her out of doors, and refused to allow her any maintenance. On complaint to the sessions, they, reciting that she was the daughter of the defendant, and that he was a man able to maintain her, made an order that the defendant (being very rich) should allow her 20*s.* a month. But because they did not allege that she was poor, or likely to become chargeable, the order was quashed.

The order must set forth, that the person is poor, &c. and not able to work.

Rex v. *Gulley, E.* 1 *Geo.* 1. *Fol.* 47. 1 *Bott*, 366. 2 *Nol. P.L.* 233. 3*d edit.* It was moved to quash an order of sessions. The order set out, that one *Mary Gulley* was in a poor destitute condition, and that her father was able to maintain her, and therefore they made an order upon him to allow her 2*s.* 6*d.* a week till further order. Objected, it did not appear that she was lame, blind, or unable to work; so that, though she was in a destitute condition, it might be because she would not work: And upon this exception the Court quashed the order of sessions.

Being of a sufficient ability] *Q.* v. *Halifax, H.* 12 *Ann. Sell & Rem*, 52. 1 *Bott*, 366. 2 *Nol. P.L.* 233. 3*d edit.* Order for the father-in-law, to pay so much a week to his daughter-in-law, was quashed, because it was not said that he was of a sufficient ability.

Must be said to be of sufficient ability.

In that manner, and according to that rate, as by the justices of that county where such sufficient persons dwell, in their sessions shall be assessed] *Jenkin's* case, *E.* 5 *Ann.* 2 *Salk.* 534. 1 *Bott*, 365. 2 *Nol. P.L.* 233. 3*d edit.* An order of sessions was made, that the defendant shall pay 2*s.* a week towards the support of his father, till that court should order the contrary. Which was held good because it was *indefinite*, and no set time limited; and if an estate happened to fall to him they might apply to the justices, otherwise, if a time was limited.

Order to pay indefinitely as to time, is good.

By the justices of that county where such sufficient persons dwell.] Therefore if a child live in the county of *Middlesex*, and be maintained by the parish there, and the grandfather live in the county of *Suffolk*, the justices of *Middlesex* can make no order therein, but the justices of the county of *Suffolk* must make the order. 2 *Bulstr.* 344.

The order must be made by the justices of the county where such sufficient person dwells.

In their sessions shall be assessed] *Vide* stat. 59 *G.* 3. *c.* 12. § 26. *ante*, p.161. *Q.* v. *Jones, T.* 9 *Ann. Fol.* 41. 1 *Bott*, 364. 2 *Nol. P. L.* 231. 3*d edit.* There was an order for the grandmother to take care of her grandchildren, and by the order they send the grandchildren to the grandmother.—By the whole Court: They cannot send the grandchildren to the grandmother; but the justices ought to have made a rate upon the grandmother of so much a-week.

Pauper not to be sent to such sufficient person.

And it is said, that in the order of sessions it ought to appear that the party to be relieved is become chargeable to the parish; for unless he be so, the parish has no ground of complaint, 16 *Vin. Abr.* 424. *Rex* v. *Tripping*, 1 *Bott*, 366. 2 *Nol. P. L.* 233. 323. 3*d edit.*

Pauper must be chargeable.

And the order may be that the grandfather shall pay so much for the time past for wherever the grandchild was chargeable. *Rex* v. *Joyce*, 16 *Vin. Abr.* 423.

Penalty of 20*s.* a-month.

On pain of 20s. a month —— to be levied by distress] *Rex* v. *Robinson*, *T.* 32 & 33 *Geo.* 2. 2 *Burr.* 799. 1 *Bott*, 380. 2 *Nol. P.L.* 372. 3*d edit.* The defendant was *indicted* for refusing to obey an order of sessions, for maintaining his two infant grandchildren. It was moved in arrest of judgment, and urged, that this is a new offence: and where a statute creates a new offence, and gives a particular penalty, and specific method of recovering the same, that course ought to be pursued, and the party shall not be punished by indictment. — By Ld. *Mansfield* C. J. The rule is certain, that where a statute creates a new offence by prohibiting and making unlawful any thing that was lawful before, and appoints a specific remedy against such new offence by a particular sanction and particular method of proceeding; that method must be pursued, and no other: but where the offence was antecedently punishable by a common law proceeding, and a statute prescribes a particular remedy by a summary proceeding, there either method may be pursued, and the prosecutor is at liberty to proceed either at common law, or in the method prescribed by the statute; because there the sanction is cumulative, and doth not exclude the common law punishment. In the present case a remedy existed before the statute of the 43 *Eliz.* For disobedience to an order of sessions is an offence indictable at common law. So that here are two remedies; one, to proceed by way of indictment for disobeying the order, where the weekly payment is neglected or refused to be made; the other, to distrain for the 20*s.* penalty after neglect of payment for a month. The former method has been taken in the present case: and there is no doubt but that an indictment will lie for disobeying an order of sessions. And the Court were unanimously of opinion, that the judgment ought not to be arrested.

Indictment will lie for refusing to obey the order of sessions.

Since disobeying an order of justices is an offence at common law, (vide *Rex* v. *Balme*, Vol. III. p.25.) the law of the above case applies equally to orders made by two or more justices in petty sessions, under stat. 59 *Geo.* 3. *c.* 12. § 26. *ante*, p.161.

3. Of Persons deserting their Families.

5 G. 1. c. 8.

By stat. 5 *Geo.* 1. *c.* 8. for the more effectual relief of such wives and children, as are left by their husbands and parents upon the charge of the parish: after reciting that whereas divers persons run or go away from their places of abode into other counties or places, and sometimes out of the kingdom, some men leaving their wives, a child, or children, and some mothers run or go away leaving a child or children upon the charge of the parish or place where such child, or children, was or were born, or last legally settled, although such persons have some estates, which should ease the parish of their charge, in whole, or in part: it is enacted, § 1. "that it shall and may be lawful for the churchwardens or overseers of the poor of such parish or place where any such wife, or child, or children, shall be so left, upon application to, and by warrant or order from any two justices of the peace, to take and seize so much of the goods and chattels, and receive so much of the annual rents and profits of the lands and tenements of

Churchwardens, &c. by warrant of two justices, may seize the offender's goods, &c.

5 G. 1. c. 8.

such husband, father, or mother, as such two justices of the peace, as aforesaid, shall order and direct, for or towards the discharge of the parish or place where such wife, child, or children are left, for the bringing up and providing for such wife, child, or children; which warrant or order being confirmed at the next quarter sessions, it shall be lawful for the justices of such quarter sessions to make an order for the churchwardens or overseers for the poor of such parish or place to dispose of such goods and chattels by sale, or otherwise, or so much of them, for the purposes aforesaid, as the court shall think fit, and to receive the rents and profits, or so much of them, as shall be ordered by the sessions, as aforesaid, of his or her lands and tenements, for the purposes aforesaid.

and by order of quarter sessions dispose thereof.

§ 2. The churchwardens and overseers aforesaid, shall be accountable to the justices at the quarter sessions for all such money as they or any of them shall receive by virtue of this act.

Churchwardens accountable for the monies so received.

Stable v. *Dixon*, *H.* 45 *Geo.* 3. 6 *East*, 163. 1 *Bott.* 385. 2 *Nol. P.L.* 238, 239. 305. 3*d edit.* The plaintiff declared in covenant for a year's rent. To the declaration there were four several pleas, of which the last only is material here. In this the defendant pleaded as to 7*l.* 16*s.* parcel of the rent, that before 25th *March*, 1803, (when the rent became due) the plaintiff had gone away from his place of abode (at *Corney*) into some other place, leaving his wife chargeable to *Corney;* that he continued away from the 24th of *June*, 1801, to the time of the action brought, and that during all that time she continued chargeable; that it thereupon was necessary that she should be maintained by the parish: whereupon, upon application of the churchwardens of the parish, a warrant was directed by two justices to the said churchwardens and overseers, whereby (reciting as usual) they the said justices authorised and commanded the said churchwardens and overseers of *Corney* to *receive the annual rents and profits of the lands and tenements* of the plaintiff at *Broomhill* in the parishes of *B.* and *W.* in the county of *Cumberland*, (the same being the lands and tenements demised to the defendant,) *for and towards the discharge of the said parish of* Corney, *for the providing for the plaintiff's wife, &c.* That on the 13th *July*, 1801, *the order was*, pursuant to the statute, *confirmed* by the Court, and the Court did then and there order the said churchwardens and overseers, &c. to receive 7*l.* 16*s.* rent of the rents and profits of the lands and tenements of the plaintiff at *B.*, in the parishes of *B.* and *W.* for and towards the discharge of the said parish. And then the plea alleged payment thereof by defendant. To this the replication was (*inter alia*), that on the 1st of *October*, 1801, the said 7*l.* 16*s.* in the said order of sessions mentioned, was paid by the defendant to the then churchwardens and overseers of *Corney*, pursuant to the said order, and that on the 25th *March*, 1802, the said 7*l.* 16*s.* was allowed by the plaintiff to the defendant out of the rent. To this replication it was by the defendant rejoined, that the said *sum of* 7*l.* 16*s.* *so mentioned in the* 4*th plea* to have been so paid, *was* another and a different sum of 7*l.* 16*s.* than the sum of 7*l.* 16*s.* so deducted and allowed as aforesaid, *viz. for the second year's payment under the said order in the said plea mentioned.* To this there was a demurrer and joinder in demurrer. In support of the demurrer, three objections were made: 1st, That the original order was void;

Order of two justices must state *how much* of the goods or rents should be seized, and must specify the quantum of relief to be appropriated out of them; and in case of rents must limit the period of such appropriations.

Stable v. Dixon. 2d. That the sessions had no original jurisdiction, and that therefore nothing done by them upon a void order could make it good. 3d. That if the order of sessions were good, it had been complied with by plaintiff. Upon the 1st it was argued that the original order *was void*, as being *prospective*, to seize the rents and profits *for future expences; or* if it might be prospective, still *it did not ascertain the quantum of relief required by the parish*, conformably with the words "*so much*" in the statute. To this was cited *Rex* v. *Chaffey*, 2 *Ld. Raym.* 858. Upon the 2d it was said, that the sessions had it only in their power to confirm the order, and direct a sale, and (perhaps) vary the sum before directed to be levied. Upon the 3d, That if the sessions could remedy any defect in the original order by ascertaining the sum to be raised, they have fixed it at 7*l.* 16*s.* and that sum is by the pleadings admitted to be paid and deducted out of the rent: The *order* therefore is *functus officio;* for it does not state that the same sum shall be raised *annually*.—In answer to these points it was said that the order in question followed the precedent in *Burn's Justice.* (20*th edit.*) And it was observed "*that so much of the rents and profits*" must mean of the "*annual rents,*" &c.—Lord *Ellenborough* C. J. The stat. 5 *Geo.* 1. gave to magistrates a power of appropriating to the purposes of the act *so much* of the goods and chattels, and *so much* of the annual rents and profits of the party, as they should order and direct, or as the sessions afterwards to whose confirmation such order is to be submitted, should think fit. But it never was meant to invest the parish officers or magistrates with a right to take indefinitely all the property of such a person without apportioning how much of it was to be taken for that purpose. The language of the act is that the goods and chattels, &c. are to be taken for or towards *the discharge* of the parish; which imports that it was to relieve the parish from a burden already incurred, and which was therefore capable of being then ascertained. But even if they had a *prospective* power, still the justices are to ascertain *how much* is to be taken. The act expressly says, the officers shall take *so much* as the justices shall order. The original warrant then being made in the exercise of an indefinite instead of a limited authority, and being void in that respect, the next question is, whether it were capable of receiving confirmation from the sessions. And assuming that it could, as capable of limitation in respect of the sum to be taken by the parish officers, (for they seem there to have abandoned the ground of an indefinite seizure,) then can the order of sessions be sustained beyond the terms of it, as an order to receive the sum of 7*l.* 16*s.*? Admitting that it might be good to that extent as an order to receive a definite sum (subject however to the objection to it as a confirmation of an original indefinite order of seizure), the answer is, that the sum is already paid and allowed: but taking it as it is now contended for, as an order to receive that sum annually out of the rents and profits without any limitation of time, the objection applies, that for want of such limitation, as, "till some other order made," it is void by the authority of the case mentioned. Therefore, unless the order of sessions be understood as limited to raise 7*l.* 16*s.* once for all, that would be invincibly bad; and if so understood the order has been satisfied. *Grose* J. agreed. And by *Lawrence* J. If the order of sessions had in-

tended that more than one sum of 7*l.* 16*s.* should be taken, they should have said so, more distinctly, by adding the word "*annually*" or "*till further order.*" Judgment for the plaintiff.

For the punishment of those who desert their wives and children see title Vagrants, Vol. V.

Form of an Order to seize the Goods, and receive the Rents of the Lands of Parents or Husbands having run away.

County of ——— { To the churchwardens and overseers of the poor of the parish of ——— in the said county.

WHEREAS it appears unto us whose names are hereunto set and seals affixed, two of his majesty's justices of the peace for the said county, as well upon the complaint and application of the churchwardens and overseers of the poor of the parish of ——— aforesaid, in the county aforesaid, as upon due proof upon oath before us made, that A. O. *late of the parish of ——— aforesaid, in the county aforesaid, yeoman, hath gone away from his place of abode at ——— in the parish aforesaid, into some other county or place, and hath left ——— his wife, and ——— their children, upon the charge of the parish of ——— aforesaid, the place of their last legal settlement, and that the said* A. O. *hath some estate whereby to ease the said parish of their said charge, in whole or in part; We do hereby authorise and command you the said churchwardens and overseers of the poor of the parish of ——— aforesaid, to take and seize ——— and ——— and ——— of his goods and chattels, and to receive so much* [specifying the sum] *of the annual rents and profits of the lands and tenements of him the said* A. O. *at ——— aforesaid* (a), *for and towards the discharge of the said parish, for the providing for his said wife and bringing up and maintaining of his said children: And with this warrant you are to appear at the next quarter sessions of the peace to be holden for the said county, and certify then and there what you shall have done in the execution hereof. Given under our hands and seals, at ——— in the said county, the ——— day of ——— in the year ———.*

(*See the preceding case of* Stable *v.* Dixon, p. 170.)

For the further maintenance of the poor, there are many fines and forfeitures payable to their use; as for swearing, drunkenness, destroying the game, and in many other instances, which are to be found under their proper titles.

And also parts of wastes, woods, and pastures, may be inclosed for the growth and preservation of timber and underwood for their relief, as is set forth under the title Wood, Vol. V.

4. Of the Mode of relieving and ordering of the Poor. (*b.*)

By the several statutes all along, the poor were to resort or be

(a) If the order extend to lands, then say, "until further order made."

(*b*) Of Bastards and their Filiation, see Vol. I.

Of Relief to the wives and families of soldiers and militia-men, see Vol. III. *tit.* Military Law.

Of Pauper Lunatics, see Vol. III.

Poor to be maintained within their own parishes;

sent to their own parishes to be relieved; and in *Clypton* v. *Ravistock*, *E.* 11 *Ann. Sett. & Rem.* 49. 2 *Nol. P. L.* 324. 3*d edit.* it was adjudged as follows: There was an order reciting, whereas *John Saunderson* and his wife are last settled in *Clypton*; these are to order you the churchwardens of *Clypton* to repair to the parish of *Ravistock*, and to relieve them, being so sick that they cannot be removed.—By the Court: The justices have no authority to send for officers out of another parish, but the parish where the poor reside are bound to maintain them as long as they continue with them. But in the case of *Darlington* v. *Hemlington*, *H.* 17 *Geo.* 3. 2 *Nol. P. L.* 304. 324. 3*d ed. post*, where two bastard children, settled at *Darlington*, resided with their mother as nurse children in the parish of *Hemlington*, where the mother was settled: it was determined that the parish where the children's settlement was should maintain those children in that other parish.

excepting in the case of bastards, being nurse children.

43 Eliz. c. 2. Order to be taken therein.

By stat. 43 *Eliz. c.* 2. § 1. The churchwardens and overseers, with the consent of two justices (1 Q.) shall take order from time to time, for setting to work the children of all such whose parents shall not by the said churchwardens and overseers, or the greater part of them, be thought able to keep and maintain their children; and for setting to work all such persons, married or unmarried, having no means to maintain them, and using no ordinary and daily trade; and for the necessary relief of the lame, impotent, old, blind, and such other among them being poor, and not able to work.

§ 4. And the said justices, or one of them, shall send to the house of correction, or common gaol, such as shall not employ themselves to work, being appointed thereunto as aforesaid.

Overseers of the poor are bound to endeavour to find work for the able bodied poor who are out of employment. *Quære*, Whether they can legally give relief to such persons, otherwise than by setting them to work and paying them for their labour?

The King v. *A. Collet*, clerk, *M.* 1823. 2 *B.* & *C.* 324. Upon an appeal against an order of two parishes for the allowance of the accounts of the overseers of the poor for the parish of *K.* in the county of *S.*, the sessions confirmed the order subject to the opinion of the Court in the following case. "The appellant Mr. *C.* is the proprietor of a considerable estate in the parish of *K.*, a part of which is in his own occupation. In consequence of the extreme depression in the price of agricultural produce, for the last two or three years the farmers have been rendered unable to make any improvements on their lands, and consequently have employed very few labourers, by which means a considerable part of the labouring population has been totally unemployed; and during this period, all poor persons belonging to the parish, who had been unable to obtain employment, have received sums of money for their maintenance from the parish officers in proportion to the number of their respective families, for which no labour has been required from them. The appellant being dissatisfied with this application of the parish funds, appealed against the overseers' accounts. The respondents, upon hearing of this appeal, admitted that the persons to whom the sums objected to in the account were paid, were in fact both able and willing to work, but that no employment could be obtained for them, which the appellant contended, the overseers were bound to provide pursuant to stat. 43 *Eliz. c.* 2. although no evidence was adduced to prove that the overseers could have employed the labourers. It also appeared, that none of the sums objected to were paid under

R. v. Collett.

or in consequence of any orders from a magistrate. The parishioners were accustomed to meet once a week at the parish work-house, at which meetings all applications for relief were received, and where all labourers belonging to the parish, who had not in the preceding week been in constant employment, attended to give an account of their earnings, and received such sums as, with the earnings, should amount to a sum deemed competent to their maintenance in proportion to the number of their children. In several cases, it appeared that able bodied men with four or five children, having had no employment in the preceding week, received from the overseers from 7*s.* to 8*s.* 6*d.* for the week; having been employed three days, 3*s.* 6*d.* to 4*s.* per week; having been employed two days, 5*s.* per week; and so in proportion to the number of their children and the amount of their week's earnings. And in all cases this relief was afforded to these persons, solely on the ground of their having been out of employment, without reference or enquiry as to any means they might have of raising money for the supply of their immediate wants by sale or pledge of their household effects; and that in many instances, the weekly relief was afforded to various able bodied labourers for many weeks in succession.—— *Cooper* and *Biggs Andrews* in support of the order of sessions. Three questions arise in this very important case. First, whether able bodied persons are entitled to relief under the provisions of the 43 *Eliz. c.* 2.; Secondly, whether they are entitled to relief unless the overseers set them to work; and, Thirdly, whether they are entitled to relief without a specific order from a magistrate. As to the first, overseers may give relief to poor persons capable of working, but unable to find employment. The 43 *Eliz. c.* 2. § 1. authorises the raising of " competent sums of money, for and towards the necessary relief of the lame, *impotent*, old, blind, and such other among them being poor and not able to work." The word *impotent* there applies to those who are unable to maintain themselves on account of being out of employment, or being unable to obtain a competent sum as wages, as well as to those who are incapable of working from the want of bodily power. In *Waltham* v. *Sparks. Skin.* 556. *Comb.* 320. *S. C. Eyres* J., speaking of one of the parties then before the Court, says, " *Joseph* having more children than he could maintain, is *impotent*, as much as if he had been so by lameness." And that is a reasonable construction, for it would be extremely unjust to say, that persons able and willing to work, but out of employment, are not to be relieved; inasmuch as the distress which they suffer does not arise from any fault of their own, or from any cause over which they have the slightest control. The 8 & 9 *W.* 3. *c.* 30. (certificate act) confirms this view of the case. The preamble begins by reciting, " Forasmuch as many poor persons chargeable to the parish, &c. where they live, *merely for want of work*, would in any other place where sufficient employment is to be had, maintain themselves and families;" now, that plainly shews that the legislature considered a pauper out of employment entitled to relief on that ground. And the 9 *Geo.* 1. *c.* 7. which provides, that no justice shall order relief to any poor person until oath be made of some matter, which he shall judge to be a reasonable cause of having such relief, and of certain other things having been done which are there pointed

R. v. Collett. out, impliedly gives power to the justice to order relief where any reasonable cause of giving it exists; and it is surely a sufficient cause for having relief, that a person able and willing to work is unable to find employment, Then, secondly, such paupers are entitled to relief although the overseers do not set them to work. For a long series of years no stock has been provided by overseers according to the mode pointed out by the 43 *Eliz. c.* 2., and for this plain reason, that since that statute was passed, every description of manufacture has been so much improved, that the articles manufactured under the directions of the overseers would not be saleable; and, therefore, providing materials for the poor to work upon would only bring an unnecessary burthen on the parish. And the 43 *Eliz. c.* 2. is not imperative but discretionary, for it says in section first, that " the churchwardens and overseers shall *take order* from time to time, by and with the consent of two or more justices of peace for the county, for setting to work the children of all such whose parents shall not by the said churchwardens or overseers, or the greater part of them, be thought able to keep and maintain their children; and also for setting to work all such persons married or unmarried, having no means to maintain them, and use no ordinary and daily trade of life to get their living by." The expression " to take order," shews that they were to exercise their judgment upon the propriety of setting to work the persons pointed out. But if it be imperative, although the overseers may be indicted for disobeying the statute, still the poor are in the mean time entitled to relief. If there be no law authorising the giving of money to poor persons out of employment, there is none to authorise the giving of it to those who are fully employed, but unable to obtain wages sufficient for their maintenance. But the 9 *Geo.* 1. *c.* 7. § 2. shews that the law is not so, for it is there enacted, that "no officer of any parish shall, (except upon sudden and emergent occasions,) bring to the account of the parish *any monies* he shall give to any *poor person* of the same parish (not " monies laid out for materials,") who is not registered in the books to be kept by the parish, (see 3 & 4 *W.* & *M. c.* 11. § 11.) as a person entitled to receive collection, on pain of forfeiting the sum of 5*l.*" This statute recognises a power to give money to any poor person, and does not confine those entitled within the description in the 43 *Eliz. c.* 2, even supposing that description is to receive the narrow construction which will be contended for on the other side. Thirdly, the overseers were justified in giving relief without a specific order from a magistrate. The case certainly is not within the last cited statute for want of such order, but it is within the 36 *Geo.* 3. *c.* 23. § 1., by which it is enacted, " That it shall be lawful for the overseers of any parish, &c. with the approbation of the parishioners, or the majority of them, in vestry or other usual place of meeting assembled, or with the approbation in writing of any of H. M.'s justices of the peace acting for the district, to distribute *and pay* (plainly meaning the giving of money,) collection and relief to any industrious poor person or persons at his, her, or their homes, &c. under certain circumstances of temporary illness or distress." It is stated in this case, that the parishioners were accustomed to meet once a week at the parish work-house, at which meetings all applications for relief were received. The overseers have, therefore, complied with the

first part of the alternative in the 36 *Geo.* 3. *c.* 23. § 1., and are entitled to have the sums in dispute allowed. The persons relieved are stated to have been out of work; now that was a temporary distress, the duration of which was quite uncertain, and although it might continue for several weeks, would still be within the meaning of the act. And as the parishioners, who have to support the poor, are also to decide upon their claims to relief, that circumstance is a sufficient check to prevent any improper expenditure of the parish funds by the overseers of the poor. R. v. Collett.

Scarlett and *Eagle*, contrà. The overseers of the poor are not, by the 43 *Eliz. c.* 2. warranted in giving pecuniary relief to persons able to work, without requiring work from them, and that power has not been enlarged by any subsequent statutes. It has been pretty generally taken for granted, that the 43 *Eliz. c.* 2. was the first legislative provision for the maintenance of the poor, but that is an erroneous supposition. It certainly embraces all the former laws, and was the result of all the experience then obtained upon the subject: but there are earlier statutes, (*see* p. 179. n. *a.*) and some of them throw light upon the question now under consideration. There is not, however, in any one of them, a single expression which gives colour to the idea, that any persons are entitled to relief in money, unless as a remuneration for their labour, except those who are unable to labour, by which a physical inability must be understood. The preamble of the 5 *Eliz. c.* 2. is worthy of much attention; " to the intent that idle and loitering persons and valiant beggars be avoided, and the *impotent, feeble, and lame*, which are the poor in very deed, should be hereafter relieved and well provided for." It then enacts, " that a book shall be kept in which the names of all householders and inhabitants shall be entered, also the names of all such impotent, aged, and needy persons, which are not able to live of themselves, nor with their own labour; for them a collection is to be made, and the parson and churchwardens are to appoint two able persons to be gatherers and collectors, and the collection is to be distributed to the said poor and impotent persons, after such sort, that the more impotent may have the more help, and such as can get part of their living to have the less, and by the discretion of the collectors to be put in such labour as they be fit and able to do." Here, then, was an enactment that provision should be made for the poor, and the means of making that provision are pointed out, *viz.* by setting to work those who were capable of working, and giving pecuniary relief to the impotent. Nothing could more clearly shew the intention of the legislature upon this point, than the provision that those not wholly impotent should do as much work as they were able. No material alteration was made by any subsequent statute, until the whole of them were incorporated in the 43 *Eliz. c.* 2., the first section of which enacted, " that the overseers should raise weekly or otherwise, by taxation, in the manner there specified, a convenient stock of flax, hemp, wool, thread, iron, and other necessary ware and stuff, to set the poor on work, and also competent sums of money, for and towards the necessary relief of the lame, impotent, old, blind, and such other among them, being poor and not able to work, and to do and execute all other things, as well for the disposing of the said stock, as otherwise, concerning the premises as to them shall seem convenient." Now there

R. v. Collett. is nothing in that enactment which binds the overseers to employ the poor in any particular work. The means of employing them pointed out by the act are only to be adopted if they should be thought the best. The overseers are expressly authorised to do such other things touching the premises, that is, the employment of the poor, as to them shall seem convenient; that gives them authority to instruct the poor in trades; and if the labour of the poor becomes unnecessary in the old channels, it is the duty of the overseers to divert it into a new one. It is not contended, that a person out of employment is to be suffered to starve, because he is able to work, or that he is not entitled to relief, but that relief must be provided by setting him to work in some way or other. The construction which has been put upon § 7. of the 43 *Eliz. c.* 2., strongly corroborates the idea, that *impotent* in the first section means those physically unable to work. That section enacts, "that the father and grandfather, and the mother and grandmother, and the children of every poor, old, blind, lame, and impotent person, or other poor person not able to work (being of sufficient ability), shall at their own charges relieve and maintain every such poor person in that manner and according to that rate, as by the justices of peace of that county where such sufficient persons dwell, at their general quarter sessions shall be assessed." The dictum of *Eyres* J., in the case of *Waltham* v. *Sparks*, has been referred to, as shewing that the word *impotent* includes those who cannot obtain employment; but when the case itself is examined, it appears not to justify any such conclusion. It was an action of debt on a bond, conditioned to save the parish of *S.* harmless from *John Godion*, his wife and children; defendant pleaded *non-damnificatus;* plaintiff replied, that *Joseph*, son of *John*, born at the time of the obligation made, his wife and children, were a charge to the parish, *for Joseph was impotent*, and 2*s*. a week were paid to *Joseph* for the maintenance of himself and his family, of which 8*d*. was for the maintenance of *Joseph*. Defendant rejoined and traversed, that the 8*d*. was applied to the maintenance of *Joseph*. On demurrer judgment was given for the plaintiff. Now it is quite clear that the bond was forfeited, whether the money was applied to the maintenance of *Joseph* or his family. It was paid to him, "because he was impotent." The dictum of *Eyres* J. was quite unnecessary and extra-judicial. Then, in *Rex* v. *Gulley* (*a*) an order, made under 43 *Eliz. c.* 2. § 7., set out, that one *M. G.* was in a *poor, destitute* condition, and that her father was able to maintain her; and the order was quashed, because it did not appear that she was *lame, blind*, or *unable to work*. So in *Rex* v. *Litton* (*b*), upon complaint that *A.* was deserted and impotent, the justices adjudged and awarded the father to pay so much a week, and the order was quashed, because there was no *adjudication* that she was *impotent*. These decisions were recognised and acted upon in *Rex* v. *Hayworth* (*c*), and in *Rex* v. *Stoke Ursey* (*d*), and *Rex* v. *Tipper*. (*e*) The same words are

(*a*) *Foley*, 47. 1 *Bott*, 366. *S. C.* (*b*) 1 *Bott*, 366.
(*c*) 1 *Str.* 10. 1 *Bott*, 402. *S. C.* (*d*) 1 *Bott*, 403. *n.*
(*e*) 1 *Bott*. 403. *n.* See also *Kilbeck's case*, 2 *Keb.* 37. pl. 79. *Rex* v. *Grant*, *ib.* 537. pl. 61. *Rex* v. *Payn*, *ib.* 643. pl. 75. *Rex* v. *Moy*, *ib.* 744. pl. 50. An anonymous case, 5 *Mod.* 397. ca. 200.; and *Kimmalton* v. *Laystas*, 2 *Bulst.* 347.

used in the first section of the 43 *Eliz.* *c.* 2., to point out who are to receive pecuniary relief from the parish, as are afterwards introduced into the seventh, respecting the support of parents by children, or the reverse. The orders under those sections are made in *consimili casu.* Now it is clear, that a good order cannot be made upon a parent to support a child, unless it be shewn that the child is impotent; and it would be absurd to say that a similar order upon the parish would be valid. The next statute bearing upon this question is, the 13 & 14 *Car.* 2. *c.* 12. The third section of that act enables persons to go out of their own parish to work in another, taking with them a certificate that they belong to the parish which they leave, and it provides that "if they shall not return when their work is finished, or shall fall *sick* or *impotent*, whilst they are in the said work, it shall not be accounted a settlement, but they may be removed to the place whence they came. There the word *impotent* clearly means unable to work, not unable to procure work. The subsequent part of the same section enacts, "that if the churchwardens and overseers of the poor of the parish to which such persons shall be removed refuse to receive them, and to provide work for them, as other inhabitants of the parish, they shall be subject to indictment." Nothing could be a plainer recognition of the obligation, to find work for those out of employment, imposed on the overseers. Then followed the 3 & 4 *W.* & *M.* *c.* 11., to which, perhaps, may be traced the present practice of allowing relief in money to persons not included in the description, in the first section of the 43 *Eliz.* *c.* 2. The latter statute left the distribution of the funds collected in the discretion of the overseers, subject to no other controul than the allowance of their accounts; that power was abused, as appears by the recital in the 3 & 4 *W.* & *M.* *c.* 11. § 11. which then provides "that books shall be kept, and the names of those who receive collection registered therein, together with the causes of their receiving relief; and that no person not entered in those books should be allowed to receive collection at the charge of the parish, but by the authority of a justice of peace residing within the parish, or (if none should be there dwelling) in the parts near adjoining, or by order of the quarter sessions, except in certain cases of emergency." It has been supposed that a justice was thereby empowered to order relief to any person at his discretion, but that supposition is quite unfounded. It does not vary the mode of giving relief, or give any new description of persons a claim to it, but merely regulates the distribution of the money collected. If a justice, under that act, put a person on the collection list to receive money, it was necessary that he should be described as impotent. The 8 & 9 *W.* 3. *c.* 30. does not support the position for which it was cited on the other side. It certainly recites that persons are chargeable to the parish, "merely for want of work," but that has never been denied. Such persons are to have relief, but that must be given by finding them work, there is no power to give them money, without requiring work from them, and the legislature never seem to have contemplated any different mode of relief, whether the labour should prove profitable or not. The second section of that act is a clear legislative recognition of the principle now contended for. It is expressly stated that the enactment therein contained was made "to the end that the money

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raised only for the relief of such as are *as well impotent* as poor may not be misapplied and consumed by the idle, sturdy, and disorderly beggars." The 9 *G.* 1. *c.* 7. § 1. also has been cited on the other side, but that only required that certain directions should be complied with before any poor person had relief; it did not alter the mode of giving relief, nor is there a single expression in it to justify the opinion that those able to work, but out of employment, were to receive pecuniary relief. One great object of the statute was the establishment of poor-houses for the "lodging, keeping, maintaining, *and employing* the poor." The 22 *G.* 3. *c.* 83. was made in pari materiâ: that authorised the union of different parishes for the purpose of better enabling the overseers of the poor to employ those out of work, and does not authorise the administration of relief in any other mode. The 36 *G.* 3. *c.* 23. was merely intended to obviate the necessity of sending the distressed to the poor-house under all circumstances. The temporary distress there mentioned is such as might arise from frost or floods, or accidental causes of that nature, the termination of which could be fairly calculated upon, and clearly does not include the case of persons out of work, and who have not any prospect of obtaining employment.(*a*) — *Abbott* C. J. It

(*a*) There are several statutes earlier in point of time than the 43 *Eliz.*, which throw some light upon the principal point discussed, but not decided, in this case, viz., whether the overseers of the poor are or are not justified in giving *pecuniary* relief to the able bodied poor when out of employment, without setting them to work? An express power to give such relief to such persons certainly is not contained in any of those statutes; and when the various steps are examined by which the legislature gradually advanced from their first crude provisions to the more mature enactments of the 43 *Eliz. c.* 2., it appears that no such power was up to that time given by implication.

By the 22 *H.* 8. *c.* 12. *s.* 1. intituled "An act concerning the punishment of beggars and vagabonds," it was enacted, that the justices of the peace in all and singular the shires, &c. within the limits of their commissioners, shall from time to time make diligent search, and inquire of all *aged, poor, and impotent* persons which live, or of necessity be compelled to live, by alms of the charity of the people, and give them licences to beg within certain limits. By *sect.* 2., impotent persons begging without licences, were to be whipped and set in the stocks. By *sect.* 3., it was enacted, that "if any persons, being whole and mighty in body, and able to labour, be taken in begging; or if any, being whole and mighty in body, and able to labour, having no land or master, nor using any lawful merchandize, craft or mystery, whereby they might get their living, be vagrant, or can give no reckoning how they do lawfully get their living, they shall be taken to a justice of peace, and by him be ordered to be whipped, and after whipping, they shall be enjoined to repair to the place of their birth, or last abiding for three years, and there put themselves to labour, like as true men ought to do."

The 27 *H.* 8. *c.* 25., intituled "An act for punishment of sturdy vagabonds and beggars;" after reciting that no provision is made for the persons mentioned in the third section of the last cited act after they get home, provides that the poor shall be supported by alms, so that they shall not be obliged to beg and wander about, and that all sturdy vagabonds and valiant beggars shall be caused and compelled to be set and kept to continual labour, in such wise that by their said labour they may get their own living; and sect. 4., provides that the churchwardens and two others of every parish shall collect alms in such good and discrete wise as the *poor, impotent, lame, feeble, sick, and diseased* people, *being not able to work,* may be provided, holpen, and relieved, so that in no wise they be suffered to go openly in begging; and that such as be lusty, or having their limbs strong enough to labour, may be daily kept in continual labour, whereby every one of them may get their own subsistence and living by their own hands.

The 1 *Ed.* 6. *c.* 3., intituled "An act for the punishment of vagabonds, and

does not appear upon the case before us that the overseers of the poor considered themselves bound to provide work for the unemployed poor, if that were practicable; nor whether they in any way endeavoured to attain that object. Before we determine whether the overseers were or were not justified in giving pecu- R. v. Collett.

for the relief of the poor and impotent persons," in sect. 1., provides that, "If any man or woman, not being lame, impotent, or so aged or diseased with sickness, that he or she cannot work, not having lands, &c., whereon they may find sufficiently their living, shall either like a serving man wanting a master, or like a beggar, be lurking in any house, or wandering by the highways, not applying themselves to some honest labour, nor offering themselves to labour with any that will take them, and if no one will otherwise take them, do not offer to work for meat and drink, they shall be taken for vagabonds. By sect. 9., after reciting that forasmuch as there are many maimed or otherwise lamed, sore, aged, and impotent persons which resort to the city of *London*, &c. begging, who, if they were separated, might easily be nourished in the places where they were born, it was enacted that the mayor, constables, and head officers of the cities, &c. to which such resort shall be, shall see all such idle, impotent, maimed, and aged persons, who otherwise cannot by their discretions be taken for vagabonds, which were born within the said cities, &c., or have resided there for three years, to be provided for. Sect. 10. provides for the removal of such as were not born in the place where found, nor had been conversant there for three years. Sect. 11. was as follows: "Provided always, that if any of the said aged, maimed, or impotent persons of the cities, towns, or villages where they were born in, or had their most abiding as aforesaid, be not so lame or impotent but that they may work in some manner of work, that then such town, parish, or village do either in common provide some such work for them as they may be occupied in, or appoint them to such as will find them work for meat and drink."

The 3 & 4 *Ed.* 6. *c.* 16., intituled "An act touching the punishment of vagabonds and other idle persons," repealed the 1 *Ed.* 6. *c.* 3., and revived the 22 *H.* 8. *c.* 12.; but contained clauses 4, 5, and 6., corresponding to 9, 10, and 11. of the act repealed.

The 5 & 6 *Ed.* 6. *c.* 2., "For the provision and relief of the poor," has this preamble, "To the intent that valiant beggars, idle and loitering persons, may be avoided, and the impotent, feeble, and lame provided for, which are poor in very deed;" and confirms 22 *H.* 8. *c.* 12., and 3 & 4 *Ed.* 6. *c.* 16. Sect. 2. enacts, that a register shall be kept of all householders and inhabitants in each parish, and of such impotent, aged, and needy persons as are not able to live of themselves, nor with their own labour, that two collectors shall be appointed yearly, and that the collections shall be distributed to the poor in the same manner as was afterwards provided by the 5 *Eliz.* *c.* 3. (particularly noticed in the argument).

The 2 & 3 *Ph.* & *M.* *c.* 5. was the next act on this subject. The preamble was the same as of the last cited statute. By sect. 1. it confirmed the 22 *H.* 8. *c.* 12. and 3 & 4 *Ed.* 6. *c.* 16.; and sect. 2. is similar to the same section of the 5 & 6 *Ed.* 6. *c.* 2. Sect. 7. provides, "That if it shall chance any parish to have in it more poor and impotent folks *not able to labour*, than the said parish is able to relieve, they may be licensed to beg elsewhere."

The effect of the 5 *Eliz.* *c.* 3. *s.* 1., the next statute in order, was shewn in the argument. Sect. 10. provides for the giving of licenses to beg as before, but requires that the *infirmity* of the person shall be specified in the licence.

The 14 *Eliz.* c. 5., "An act for the punishment of vagabonds, and for relief of the poor and impotent," repealed the 22 *H.* 8. *c.* 12., 3 & 4 *Ed.* 6. c. 16., and 5 *Eliz.* *c.* 3. Sect. 5. gives a definition of the persons who are to be intended to be rogues and vagabonds and sturdy beggars, and amongst others, includes "all common labourers, being persons *able in body*, using loitering, and refusing to work for such reasonable wages as is taxed, and commonly given in such parts where such persons do or shall happen to dwell." Sect. 16., after this preamble, "Forasmuch as charity would that poor, aged, and impotent persons should as necessarily be provided for as the said rogues and vagabonds and sturdy beggars repressed, and that the said aged, impotent, and poor people should have convenient habitations, &c. to settle themselves upon, to the end that they should not

R. v. Collett. niary relief to the unemployed poor, the case must go down to the sessions again, that we may be informed whether any, and if any, what endeavours were made to procure employment for them. All that the court can now say is, that undoubtedly it is the primary duty of the overseers to find employment for the

beg or wander about," provides for the keeping a register of the poor, finding habitations, levying money for their support by assessment, and for the appointment of overseers. Sect. 22. enacts "that, if any of the said aged and impotent persons, not being so diseased, lame, or impotent, but that they may work in some manner of work, shall be by the overseers of the said abiding place appointed to work, if they refuse, then to be whipped and stocked for their first refusal, and for the second refusal, to be punished, as in case of vagabonds in the first degree of punishment;" (several degrees of punishment had been before provided for vagabonds). Sect. 23. appears to be very important; it is as follows: "Provided always that three justices of the peace, whereof one to be of the quorum, of and with the surplusages of the said collections, &c. (the said poor and impotent people satisfied and provided for), shall, by their discretions, in such convenient place and places within their shires as they shall think meet, place and settle to work *the rogues and vagabonds that shall be disposed to work*, born within their said counties, or there abiding for the most part within the said three years, there to be holden to work by the oversight of the said overseers, to get their livings, and be sustained *only* upon their labour and travail." Here, then, is the first clear legislative enactment for providing work for the able bodied poor. Until this time, it seems to have been taken for granted, that all able-bodied persons could find employment if they pleased; and the very fact of their being out of work, and living by charity, made them, in the eye of the law, rogues and vagabonds, liable to be apprehended and punished. No relief of any kind was to be provided for them at the public expence; those enactments which ordered that they should be kept to hard labour, seem merely to have made it the duty of certain persons to see that they did continually work, as if it were assumed that employment could always be found. The last mentioned statute, which enacted, that to a certain extent work should be provided, so far from authorising the affording relief by money to such persons, expressly says, that "*they are to get* their livings, and to live and be sustained *only* upon their labour and travail." This was manifestly a very imperfect provision, and no reason for the enactment is distinctly stated, but it may be collected that some persons, apprehended as rogues and vagabonds, had expressed a willingness to work if they could find employment; for it speaks of the *rogues and vagabonds that shall be disposed to work*. This is rendered more clear by the 18 *Eliz.* c. 3., made to amend the former act, and intituled "An act for setting the poor on work, and for the avoiding of idleness." Sect. 4. runs thus, "Also to the intent, youth may be accustomed and brought up in labour and work, and then not like to grow to be idle rogues, and to the intent also that such as be already grown up in idleness, and *so* rogues at this present, may not have any just excuse in saying that they cannot get any service or work, and that other *poor and needy* (not impotent) persons, being willing to work, may be set on work: Be it enacted, that a competent store and stock of wool, hemp, &c. shall be provided, to be committed to the care of persons to be appointed collectors and governors of the poor, who are to dispose, order, and give rules for the division and manner of working the said stock, to the intent every such *poor and needy* person, old or young, able to do any work, standing in necessity of relief shall not for want of work go abroad, either begging or committing pilferings, or other misdemeanours, *living in idleness*." It then goes on to provide that part of the stock shall be given to each poor person to be worked up, and that when he shall bring it back worked up, the overseers shall pay him *for his labour*, and sell the articles manufactured, and with the money coming of the sale, buy more stuff, &c. At the time when this statute was passed, the legislature appear to have been duly sensible of the mischief to be apprehended from suffering the poor to live in idleness, and, therefore, as humanity required that some provision should be made for those who were unable to maintain themselves, wisely enacted that such poor persons as were able to work should be compelled to do so, and be paid for their labour; and they made no provision for affording relief to such persons in any other mode. It does not

poor if possible. And I express that opinion now for the sake of the poor themselves, to whom no greater kindness can be done than by enabling them to earn their own living by labour, instead of suffering them to eat the bread of idleness, by which their habits and morals must soon be corrupted. Case sent back to sessions. R. v. Collett.

59 G. 3. c. 12. Parishes may provide land for the employment of the poor,

Stat. 59 *G.* 3. *c.* 12. § 12. after reciting that "whereas by an act passed in the 43d year of the reign of queen *Elizabeth*, the churchwardens and overseers of the poor, are directed to set to work certain persons therein described: and whereas by the laws now in force, sufficient powers are not given to the churchwardens

appear to have been contemplated that any profit would be acquired by the labour of persons so employed; for the act does not say that any part of the money produced by the sale of the manufactured articles shall be applied to reimburse the parish, the monies paid to the labourers, but merely that, with the money coming of such sale, more stuff shall be bought for the purpose of being manufactured. Thus the law remained until the passing of the 39 & 40 *Eliz.* c. 3., which it is unnecessary to notice, as all the provisions of it are embodied in the 43 *Eliz.* c. 2. It appears by *Lambard's Eirenarcha*, chap. 7. p. 206., that soon after the passing of the latter statute, certain resolutions, commonly ascribed to her majesty's justices at *Westminster*, were pretty generally known, and considered as tending to the right execution of the law. The eighth and ninth resolutions are applicable to the present question. "If the parents be able to work, and may have work, they are to find their children by their labour, and not the parish; but if they be overburthened with children, it shall be a very good way to procure some of them to be placed apprentices according to the statute." "No man is to be put out of the town where he dwelleth, nor to be sent to their place of birth (or last habitation) but a vagrant rogue, nor to be found by the town, *except the party be impotent*, but ought to set themselves to labour, if they be able and can get work; if they cannot, the overseers must set them to labour." There is not in any of those resolutions (twenty in number) any recognition of a power in the overseers to give relief to able-bodied persons, otherwise than by finding them employment. Whether any subsequent statute has altered the law on this subject, or whether the opinion above suggested, as to the effect of the earlier statutes, be or be not correct, remains to be decided whenever this important question shall be distinctly brought before the court.

In *Strype's Annals of Church and State*, under queen *Eliz.*, *b.* 2. *p.* 90., there is a letter, which was addressed to lord treasurer *Burghley* by a justice of peace for the county of *Somerset*, which shews that the great evils arising from habits of idleness amongst the poor, began then to be understood, and strengthens the idea that one great object of the legislative provisions for the poor made about that time, was to prevent able-bodied men from being unemployed. After observing upon the great increase of crime, and the number of wandering, idle vagabonds then committing depredations in that part of the country, the writer proceeds, "And when these lewd people are committed to the gaol, the poor country that is robbed by them are forced to feed them, which they grieve at. And this year there hath been disbursed to the relief of the prisoners in the gaol 73*l.*, and yet they allowed but 6*d.* a man weekly. And if they were not delivered at every quarter sessions, so much more would not serve, nor two such gaols would hold them. But if this money might be employed to build some houses adjoining to the gaol for them to work in, and every prisoner, committed for any cause and not able to relieve himself, compelled to work, as many of them as are delivered upon their trials, either by the acquittal of the grand jury or petty jury, burning in the hand or whipping, presently transferred thence to the houses of correction to be kept in work, except some present will take any into service; I dare presume to say the tenth felony will not be committed that now is." This letter also shews that at that time prisoners committed for trial, although they could not be compelled, and were not willing to work, were in point of fact in some places supported at the expence of the public. It seems, however, that they could not legally claim to be so maintained. See the case of *The Justices of the North Riding of Yorkshire.* 2 *B.* & *C.* 286. Vol. II., title Gaols, &c.

59 G. 3. c. 12. and overseers, to enable them to keep such persons fully and constantly employed; enacts, "that it shall be lawful for the churchwardens and overseers of the poor of any parish, with the consent of the inhabitants thereof in vestry assembled, to take into their hands any land or ground which shall belong to such parish, or to the churchwardens and overseers of the poor of such parish, or to the poor thereof, or to purchase, or to hire and take on lease for and on account of the parish, any suitable portion or portions of land within or near to such parish, not exceeding twenty acres in the whole; and to employ and set to work in the cultivation of such land, on account of the parish, any such persons as by law they are directed to set to work, and to pay to such of the poor persons so employed as shall not be supported by the parish, reasonable wages for their work; and the poor persons so employed shall have such and the like remedies for the recovery of their wages, and shall be subject to such and the like punishment for misbehaviour in their employment, as other labourers in husbandry are by law entitled and subject to."

not exceeding twenty acres.

And may let portions of land to poor inhabitants.

§ 13. Provides and enacts, "that for the promotion of industry amongst the poor, it shall be lawful for the churchwardens and overseers of the poor of any parish, with the consent of the inhabitants in vestry assembled, to let any portion and portions of such parish land as aforesaid, or of the land to be so purchased or taken on account of the parish, to any poor and industrious inhabitant of the parish, to be by him or her occupied and cultivated on his or her own account, and for his or her own benefit, at such reasonable rent and for such term as shall by the inhabitants in vestry be fixed and determined."

See also § 14. *post*, page 200.

57 G. 3. c. 34.

By stat. 57 *Geo.* 3. *c.* 34. intituled "*An act to authorize the issue of exchequer bills, and the advance of money out of the consolidated fund to a limited amount, for the carrying on of public works and fisheries in the U. K., and employment of the poor of G. B. in manner therein mentioned.*"

Advance not to be made to parishes, unless application made with consent of majority in number and three-fourths in value of persons paying poor rates; or where there is a select vestry, &c. then with consent of four-fifths of that body.

§ 29. It is enacted that no such exchequer bills shall be advanced in aid of any parish in *G. B.* unless the application for such advance shall be made with the consent of *not less than the majority in number*, and *of three-fourth parts in value*, such value to be calculated and ascertained from the last rate made for the relief of the poor in such parish, of the persons assessed to and paying such rates; or where the poor rates of any parish shall be under the care and management of any select vestry or commissioners, governors of the poor, trustees or other select body, then with the consent of not *less than four-fifths* of such select body, by whatever name the same may be called; such consent to be certified by some justice of the peace or magistrate acting as such in each parish, and one or more of the overseers of the poor of the parish or place in respect of which the application shall be made.

Principal sums of exchequer bills with interest to be repaid by instalments.

§ 35. Enacts, that the principal sums contained in the exchequer bills which shall be advanced or lent by the said commissioners for the execution of this act in *G. B.* under the authority of this act, shall be repaid, without deduction or abatement, together with interest for the same, by instalments, (that is to say) the principal sum in each and every exchequer bill shall be repaid

to the cashier or cashiers of the Bank of *England* at their office, 57 G. 3. c. 34.
together with interest for the same at and after the rate of five pounds *per centum per annum*, by the space of fifteen days at least before the time when each such exchequer bill shall become payable according to the provisions of this act, such interest to be computed on the said principal sum from the date of such exchequer bill to the time of the payment thereof.

57 G. 3. c. 124. Regulating advances to parishes.
By stat. 57 *Geo.* 3. *c.* 124. § 5. It is enacted, that no advance shall be made under the provisions of 57 *Geo.* 3. *c.* 34. for the use of any parish, township or place in *G. B.*, in which the amount of the money actually expended for the relief of the poor, in the year ending at *Easter* 1817, or ending at the usual quarter day immediately preceding *Easter* 1817, shall not exceed by three-fourths the average annual amount of the money expended for the relief of the poor for the three years preceding *Easter* 1816, or shall not exceed by one-half the amount so expended for the year ending *Easter* 1816; any thing in the said act of 57 *Geo.* 3. *c.* 34. to the contrary in any wise notwithstanding.

Repayment of exchequer bills.
§ 6. Enacts, that the principal sums contained in the exchequer bills which shall be advanced or lent by the said commissioners for the execution of this act in *G. B.*, under the authority of the recited act (57 *Geo.* 3. *c.* 34.), the payment whereof shall not be otherwise provided for pursuant to the said recited act, shall be repaid without deduction or abatement, together with interest for the same at and after the rate of five pounds *per centum per annum*, to the cashier or cashiers of the Bank of *England*, at their office, by the space of fifteen days at least before the time when each such exchequer bill shall become payable according to the provisions of this act; such interest to be computed on the said principal sum from the date of such exchequer bill to the time of the payment thereof.

1 G. 4. c. 60. 3 G. 4. c. 86. 5 G. 4. c. 77.
By stats. 1 *Geo.* 4. *c.* 60. and 3 *Geo.* 4. *c.* 86. the above stats. 57 *Geo.* 3. *c.* 34. and *c.* 124. are continued and amended: and by stat. 5 *Geo.* 4. *c.* 77. after reciting the above acts it is enacted, that it shall be lawful for the commissioners for the time being for the execution of stat. 57 *Geo.* 3. *c.* 34. and of the several other acts herein-before recited, whenever the said commissioners shall be directed so to do by any warrant under the hands of any three or more of the said commissioners of the treasury, and the said commissioners are hereby required to advance and lend any sum or sums of money towards the carrying into execution any act of parliament for making, completing, or maintaining any works of general public importance and utility, which shall be carried to under the direction of any commissioners appointed by authority of parliament, on such terms and conditions as shall from time to time be directed by the said commissioners of the treasury or any three or more of them, any thing in the said recited acts or any of them contained to the contrary in any wise notwithstanding:

Commissioners under recited acts, when directed by the treasury, to advance money towards carrying into execution any act for completing works of general importance and utility,

Provided always, that the rate of interest payable on such loan or advance shall not be less than the current rate of interest which shall be payable on exchequer bills at the time of making such loan or advance.

Interest not to be less than the current rate payable on exchequer bills.

3 W. 3. c. 11. Persons relieved to be entered in a book.
By stat. 3 *W. & M. c.* 11. § 11. There shall be provided and kept in every parish, a book wherein the names of all persons who receive collection shall be registered, with the day and year

when they were first admitted to have relief, and the occasion which brought them under that necessity, and yearly in *Easter* week, or as often as shall be thought convenient, the parishioners shall meet in the vestry or other usual place of meeting in the parish, before whom the book shall be produced, and all persons receiving collection to be called over, and the reasons of their taking relief examined, and a new list made and entered of such persons as they shall think fit and allow to receive collection.

No others to be relieved, but by order of the justices.

§ 11. And no other person shall be allowed to receive collection at the charge of the parish, but by authority under the hand of *one justice* residing within such parish, or (if none be there dwelling) in the parts near or next adjoining, or by order of the justices in sessions, except in cases of pestilential diseases, plague, or small-pox, for such families only as shall be therewith infected.

9 G. 1. c. 7.

And by stat. 9 *G.* 1. *c.* 7. § 1. No justice shall order relief to any poor person, until oath be made before him of some matter, which he shall judge to be a reasonable cause for having such relief; and that the same person had by himself, or some other, applied for relief to the parishioners at some vestry or other public meeting, or to two of the overseers, and was by them refused to be relieved: and until such justice hath summoned two of the overseers to shew cause why such relief should not be given, and the person so summoned hath been heard or made default to appear. See stats. 36 *Geo.* 3. *c.* 23. and 55 *Geo.* 3. *c.* 137. § 3. *post*, p. 203.

§ 2. And the person whom such justice shall think fit to order to be relieved, shall be entered in such book, as one of those who is to receive collection, as long as the cause for such relief continues, and no longer. And no officer shall (except upon sudden and emergent occasions) bring to the account of the parish, any money he shall give to any poor person of the same parish who is not registered in such book as a person entitled to receive collection, on pain of 5*l.* by distress, by warrant of two justices, who shall have examined into and found him guilty of such offence; which said sum shall be applied to the use of the poor by direction of the justices.

59 G. 3. c. 12. Every order for relief, in parishes not having a select vestry, shall be made by *two* or more justices except in cases of emergency.

By stat. 59 *Geo.* 3. *c.* 12. § 5. it is enacted, "that every order to be made, after the 1st day of *May* 1819, for the relief of any poor person, by the churchwardens and overseers of the poor of any parish not having a select vestry, under the authority of this act, shall be made by two or more justices, who shall, in making every such order, take into their consideration the character and conduct of the person applying for relief; provided that in every such order the special cause of granting the relief thereby directed shall be expressly stated, and that no such order shall be given for or extend to any longer time than one month from the date thereof: Provided also, that in cases of emergency and urgent distress, it shall be lawful for one justice to order such relief as the case shall require, stating in his order the circumstances of the case; but no such last mentioned order shall entitle any person to claim relief by virtue thereof more than fourteen days from the date of the order, nor shall the same have any force or effect after the next petty session to be holden within the hundred or other division or district in which the parish to which the same shall apply shall be situated."

Limitation of order.

See also § 12. & 13. *ante*, p. 128. § 26. *ante*, p. 161. § 27. and § 36. *post*, p. 182. 183. 59 G. 3. c. 12.

Stat. 8 & 9 *W.* c. 30. § 2., relating to badging the poor is repealed by stat. 50 *Geo.* 3. c. 52. Badges.

And see stats. 54 *Geo.* 3. c. 170. § 7. and 56 *Geo.* 3. c. 129. § 2. *post.*

Poor and not able to work (a)] *Rex* v. *the Inhab. of Hayworth* or *Highworth, M.* 3 *Geo.* 1. 1 *Stra.* 10. 1 *Bott*, 402. There was an order to pay 3*s.* weekly to a poor person, by the parish of *Highworth*, so long as he shall continue poor. It was objected, that by the statute it ought to appear that the person relieved is poor and impotent. *Parker* C. J. I favour these orders as much as I can, because nobody takes care to draw them up for the poor. But it must be quashed.

On the authority of this case, in *Rex* v. *Stoke Ursey, E.* 3 *Geo.* 1. an order was quashed for the same fault. So in *Rex* v. *Tipper, E.* 4 *Geo.* 1. on an order to maintain a daughter-in-law. 1 *Bott*, 403. *notis.*

Rex v. *John Fearnley*, 1 *T. R.* 316. 1 *Leach*, 425. 1 *Bott*, 418. 2 *Nol. P. L.* 234. 274. 329. 3*d ed.* This was a demurrer to an indictment found against *Fearnley*, who was overseer of the poor of the township of *Checkheaton*, for disobeying an order of two justices, for the payment of 1*s.* 6*d.* a-week to *Sarah Firth* for the maintenance of herself and her bastard-child. One objection was, there was a mistake in the caption of the sessions where the indictment was found, the word *July* being inserted instead of *October*, which the Court adjudged to be fatal. It was also objected, that as the money was ordered to be paid weekly, the defendant could not be guilty of any disobedience before the expiration of the first week. But the Court were of opinion, that the sum which was ordered to be paid *weekly* was due at the *beginning of the week.*

On an order for relief weekly, the money is due the beginning of the week.

For the necessary relief.] *Rex* v. *Colbitch, E.* 1 *Geo.* 1. 1 *Barnard.* 46. An order of sessions was made upon the overseers of this parish, that they should pay a *surgeon* his bill for curing certain poor under their care. The Court said, that the sessions have no power to make such orders, and so quashed it.

Sessions have no power to order surgeons' bills to be paid;

Rex v. *Woodsterton, M.* 6 *Geo.* 2. 2 *Barnard*, 207. 247. 1 *Bott*, 404. 2 *Nol. P. L.* 323. 3d *edit.* An order was made by two justices upon the officers of the parish of *Woodsterton* for paying 5*l.* upon account of a poor inhabitant of that parish when he was in gaol, and likewise for paying a surgeon's bill that was due upon his account; which order was confirmed at the sessions. It was moved to quash these orders. And upon shewing cause it was urged, that the justices have only power to order parish officers to relieve a poor inhabitant where it is fit he ought to be relieved. But in the present case the parish officers have actually given the party relief. They employed a surgeon, and a nurse, to take care of him. The surgeon and nurse have a proper remedy by way of action against the officers; and the justices have no pretence to interfere in this matter. And the Court were of opinion that these orders should be quashed. (*a*)

nor the justices.

Medical assistance.

(*a*) With respect to persons able, but not willing to work, see stat. 5 G. 4. c. 83. title Vagrants.

59 G. 3. c. 12. Overseers empowered, in certain cases, to give relief by way of loan only.

Stat. 59 *Geo.* 3. *c.* 12. § 29. after reciting, that it is expedient to discourage that reliance upon the poor's rates which frequently induces artisans, labourers, and others, to squander away earnings which would with suitable care have afforded sufficient means for the support of their families; enacts, "that whenever it shall appear to the justices or to the general or select vestry, or to such guardians, governors, or directors as aforesaid, or to the overseers of the poor, to whom application shall be made for relief for any poor person, that he might, but for his extravagance, neglect, or wilful misconduct, have been able to maintain himself, or to support his family (as the case may be), it shall be lawful for the overseers of the poor (by the direction of the justices, or of the general or select vestry, or of such guardians, governors or directors, where application shall have been made to them respectively,) to advance money weekly or otherwise, as may be requisite, to the person so applying, by way of loan only, and to take his receipt for, and engagement to repay every sum to be so advanced (for which no stamp duty shall be required; and it shall be lawful for any two justices, upon the application (within one year after any such loan or loans) of one or more of the overseers of the poor for the time being of the parish, to summon the person to whom any money shall have been so advanced; and if upon examination by such justices into his circumstances, it shall appear to them that such person is able, by weekly instalments or otherwise, to repay the whole or any part of the money so advanced to him, and for which he shall have given any such receipt and engagement, it shall be lawful for such justices to make an order under their hands and seals for the repayment of the whole or of any part of such money, at such time and times and in such proportions and manner as they shall see fit; and upon every default of payment, by their warrant to commit such person to the common gaol or house of correction, for any time not exceeding three calendar months, unless the sum and sums which shall be due and payable by virtue of such order shall be sooner paid."

Pensions for service in the navy, army, &c. may be assigned in certain cases for the indemnity of parishes.

§ 30. Enacts, "that when any person entitled to or in receipt of any pension, superannuation, or other allowance, in respect of his service in the navy, royal marines, army, or ordnance, shall apply to any parish for relief, for himself, or for his wife or family, it shall be lawful for the churchwardens and overseers of the poor to require the pensioner or other person applying for relief, before the same shall be granted, to assign to them the next quarterly or other payment or allowance which shall become payable to him, to the intent that they may receive the same, and retain for the use of the parish so much thereof as shall have been by them advanced for the relief of such pensioner, or other person, or of his wife or family residing with him in such parish; and it shall also be lawful for the churchwardens and over-

(*a*) An overseer has been holden to be indictable for neglecting to supply medical assistance, when required, to a pauper labouring under dangerous illness, though such pauper was not in the parish workhouse, nor had previously to his illness received or stood in need of parish relief. *Rex* v. *William Warren*, cor. *Holroyd* J. *Worcester Lent Assizes*, 1820. MS.

seers of the poor of any parish, at the request of any person who shall be entitled to or in the receipt of any such pension, superannuation, or other allowance, to advance for his support, or the support of his family, any weekly sum not exceeding the rate of his pension or allowance, to be repaid by and out of the next quarterly or other payment of such pension or allowance, and to take an assignment thereof by way of security for the money so to be advanced, any thing in any act or acts to the contrary notwithstanding; and every assignment to be made of any such pension, superannuation, or allowance, for the purposes of this act, shall be exempt from stamp duty, and shall be in the form or to the effect following; that is to say, 59 G. 3. c. 12.

I [naming the pensioner, or other applicant, and stating such particulars as shall be requisite] *do hereby assign to the churchwardens and overseers of the poor of the parish of*——— *the next payment of the pension, at the rate of*——— per diem [or, as the case may be], *granted to me as* ——— *and payable from* ——— *in order to secure to the said parish of* ——— *the repayment of the sum of* ——— *advanced to me* [or, *of the weekly sum of* ——— *ordered or agreed to be advanced to me*, as the case may be], *by such churchwardens and overserseers*. Form of assignment.

Signed by the above-named ———
before me, one of his majesty's justices of the peace for ——— *this*
——— *day of* ———.

And every such assignment, attested by one of his majesty's justices of the peace, of any quarterly or other payment payable by the commissioners for the affairs of the royal hospitals at *Chelsea* or *Greenwich*, or by the paymaster of the royal marines, or the treasurer of the board of ordnance respectively, and made as aforesaid to the churchwardens and overseers of the poor of any parish, shall be transmitted by such churchwarden or overseer, at least one month before such payment shall become due, under cover, addressed to the paymaster general of his majesty's forces, with the words "*Chelsea* pensioner" written thereon, or to the paymaster of pensions at *Greenwich* hospital, with the words "*Greenwich* pensioner" written thereon, or to the paymaster of the royal marines, with the words "royal marines pensioner" written thereon, or to the secretary to the board of ordnance, with the words "ordnance pensioner" written thereon; who shall thereupon respectively cause the said payment to be made to the churchwardens or overseers of the poor of the parish for whose security the assignment shall have been made, in the same manner as the said payment would have been made to the person assigning the same if no such assignment had been made; and such churchwardens and overseers, or any one or more of them, are and is hereby authorized to receive the same, and to retain thereout for the use of the parish so much as shall have been advanced and paid on security thereof, and forthwith to pay the residue (if any there shall be) to the pensioner or person by whom such assignment shall have been made; and if any question shall arise between the pensioner or person making any such

Such assignment, attested by justice, to be transmitted by churchwarden, &c. to paymaster general, &c.

The pension assigned to be paid to churchwardens, &c.

59 G. 3. c. 12.

assignment and the churchwardens and overseers of the poor of any parish, touching the amount which shall be due and payable to them by virtue of any such assignment, the same shall be determined in a summary way by one of his majesty's justices of the peace, and his order and determination therein shall be final and conclusive: provided that no such assignment shall entitle the churchwardens and overseers to whom the same shall be made, to receive the pension or allowance purporting to be thereby assigned, if the party assigning the same shall die before the time when such pension or other allowance would have become payable to him if no such assignment thereof had been made."

Assignments of pensions to become void by the death of the pensioner before the day of payment.

Justices may order payment to overseers of the pensions, &c. of persons leaving their families chargeable.

§ 31. Enacts, "That when any pensioner, or other person entitled to or in receipt of any such pension or other allowance as aforesaid, shall leave his wife or family chargeable, or suffer them to become chargeable to any parish, it shall be lawful for two or more justices, upon complaint thereof to them made by any one or more of the churchwardens and overseers of the poor of such parish, and verified on oath, by order (*a*) under their hands and seals to direct that the next payment which shall become due of such pension or other allowance shall be made to the churchwardens and overseers of the poor of the parish to which such wife or family shall have become chargeable; and any one or more of such churchwardens and overseers of the poor shall transmit such order to the aforesaid commissioners for the affairs of the royal hospitals at *Chelsea* or *Greenwich*, or the secretary of the board of ordnance respectively, in like manner as any assignment is herein-before directed to be transmitted to the paymaster general of his majesty's forces, and the paymaster of pensions at

(*a*) Order by Justices to Overseers, &c. to receive Pensions of Persons leaving their Families chargeable.

County of ——— to wit. } *To the Commissioners for the Affairs of the Royal Hospitals of* Chelsea *or* Greenwich, [or *the Secretary of the Board of Ordnance*, as the case may be.]

WHEREAS complaint on oath hath been made before us, two of his majesty's justices of the peace, acting in and for the county of ———, by the churchwardens and overseers of the poor of the parish of ———, in the said county of ———, that *A. P.* late of ———, hath deserted his wife and family, whereby they have become chargeable to the said parish of ———.

And whereas it duly appears unto us, that the said *A. P.* is entitled to receive of and from ——— a certain annual allowance or pension, amounting to ———, and that no assignment of the said pension hath been made by the said *A. P.* to the said churchwardens and overseers for the support and maintenance of the wife and family of the said *A. P.* Now the said *J. P.* and *S. P.* the justices aforesaid, do hereby, in pursuance of the statute in that case made and provided, order and direct that the next payment of the said pension or allowance due to the said *A. P.* shall be paid by you the said commissioners, &c. [*as the case may be*,] to the churchwardens and overseers of the poor of the said parish of ——— or to one of them, to be by them retained and applied in part or in total discharge of such sum or sums of money as they may have expended in the support and maintenance of the wife and family of the said *A. P.*, rendering the overplus (*if any*) unto the said *A. P.* or to such person as he shall duly authorise to receive the same.

Given under our hands and seals, this ——— day of ——— in the year of our Lord one thousand eight hundred and ———.

J. P. (L. S.)
S. P. (L. S.)

Greenwich, the paymaster of the royal marines, and the secretary of the board of ordnance, as the case may be; which said paymaster general, or paymaster of pensions at *Greenwich*, or the treasurer of the board of ordnance, shall thereupon, and upon sufficient proof being given that the person whose pension or other allowance shall be directed to be paid shall have been living when the same shall become payable, and would have been entitled to receive the same if no such order had been made, cause the said payment to be made to the churchwardens and overseers of the poor of the parish for whose security such order shall have been made: and the churchwardens and overseers of the poor receiving any such pension or other allowance by virtue of any such order, shall retain and apply the same, or so much thereof as shall have been actually expended for the purposes aforesaid, for the use and indemnity of the parish, and shall pay the overplus (if any there shall be) to the pensioner or person entitled thereto; and upon the receipt of any such order as aforesaid, by which the pension, or other allowance to be mentioned therein, shall be directed to be paid to such churchwardens and overseers as aforesaid, the payment thereof shall be suspended, until sufficient proof shall have been given to entitle the churchwardens and overseers of the poor of the parish, in such order named, to receive the money thereby directed to be paid to them."

59 G. 3. c. 12.

Paymaster general, &c. to make payment accordingly.

How churchwardens to apply the same.

§ 32. And whereas in many instances the wives and families of seamen employed in the merchants' service become chargeable to parishes, while their husbands and fathers are absent on such service, and it is expedient to provide for the indemnity of such parishes by and out of the wages of such seamen; be it therefore further enacted, that where the wife or family of any seaman employed in any voyage or trip (not being his majesty's service) shall, during his absence on such employment, become chargeable to any parish, it shall be lawful for two justices, upon complaint thereof to them made by any one or more of the churchwardens and overseers of the poor of such parish, and verified on oath, by order (*a*) under their hands and seals, to direct the acting owner or owners, ship's husband, or agent of the ship or vessel in which such seamen shall be employed, to pay, out of the wages which shall become due to such seamen, unto the church-

Justices empowered to order payment of wages of seamen whose family during his absence has become chargeable, for the indemnity of parishes.

(*a*) Order by Justices to Overseers, &c. to receive Seamen's Wages for the Indemnity of Parishes.

County of — to wit. } *To the Owner, Ship's Husband or Agent of the —— Ship or Vessel*, [or as the case may be.]

WHEREAS complaint on oath hath been made before us, two of his majesty's justices of the peace acting in and for the county of ———, by the churchwardens and overseers of the poor of the parish of ——— in the county of ——— aforesaid, that *A. W.* the wife of *A. S.* and their —— children, *viz.* (*naming the children*), have become chargeable to the said parish of ———. And whereas it hath been made appear to us, that the said *A. S.* is now employed in the actual service of ———, on board the ——— on a voyage to ———, and that since his departure the overseers of the said parish of ——— have necessarily laid out and expended in the maintenance and support of the wife and family of the said *A. S.* the sum of ———. We do, therefore, order and direct you, the said owner, &c. [*as the case may be*] forthwith, on receipt hereof

wardens and overseers of the poor of the parish to which his wife or family shall have become chargeable, so much as shall have been by such parish necessarily expended for their maintenance or relief, the amount, in case of any dispute, to be ascertained by two justices, whose determination thereon shall be final; and upon the production of any such order, the owner, ship's husband, or agent, by whom the wages of the seaman therein to be named shall be payable, shall pay to such one or more of the churchwardens and overseers of the poor of the parish for whose indemnity such order shall have been made, as shall demand the same, the sum and sums to be therein specified and directed to be paid, or so much thereof as the wages then due shall amount unto; and the payment to and receipt of any such churchwarden or overseer, shall be a good discharge for so much of such wages as shall be paid to them or him by virtue of any such order; and if any such owner, ship's husband, or agent, shall refuse or neglect to pay to the churchwarden or overseer producing any such order, the money thereby directed to be paid, or so much thereof as shall be actually due for the wages of the seamen to be therein named, the same may be levied and recovered, and the payment thereof enforced, against the owner or owner's, ship's husband, or agent, by whom the same shall be payable, in such and the like manner as poor's rates in arrear may be levied and recovered, and the payment thereof enforced, against the parties and persons chargeable and charged therewith: provided always, that nothing herein contained shall authorize or compel the payment of any sum or sums of money by such acting owner or owners, ship's husband, or agent, until the voyage in which the vessel shall be so engaged shall be completed, nor beyond the sum that shall be then actually due to such seamen, by such acting owner or owners, ship's husband or agent, as wages or otherwise."

And the owner, &c. to make such payments to churchwardens, &c. accordingly.

And upon refusal, proceedings may be had against owner, &c. as in case of poor rates.

3 C. c. 4. Setting up trades for benefit of the poor.

By stat. 3 *C.* 1. *c.* 4. § 22. The churchwardens and overseers may, by the consent of two justices (1 *Q.*) within their respective limits, wherein shall be more justices than one; and where no more shall be than one, with the assent of that one justice, set up and use any trade, mystery, or occupation, only for the setting on work, and better relief of the poor.

43 El. c. 2. Erecting houses for the poor.

By stat. 43 *Eliz.* *c.* 2. § 5. The churchwardens and overseers or the greater part of them, by the leave of the lord of the manor, whereof any waste or common within the parish is parcel, and on agreement with him made in writing, under his hand and seal; or otherwise, according to any order to be set down by the justices in sessions, by like leave and agreement of the lord in writing under

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to pay unto the churchwardens and overseers of the poor of the parish of——— aforesaid, or to such one of them as shall demand the same, the said sum of ———, out of the wages which are or shall become due to the said *A. S.* in discharge of the said money so expended in the maintenance and support of the said *A. W.* and their said family: And the receipt of such churchwarden or overseer shall be to you a good and sufficient discharge for the said sum of——— hereby directed to be paid, for the purposes aforesaid. Given under our hands and seals this——— day of———, in the year of our Lord one thousand eight hundred and ·

J. P. (L. S.)
S. P. (L. S.)

his hand and seal, may build in fit and convenient places of habitation in such waste or common, at the charge of the parish, or otherwise of the hundred or county as aforesaid, to be rated and gathered in manner before expressed, convenient houses of dwelling for the said impotent poor.

By stat. 9 *Geo.* 1. *c.* 7. § 4. It shall be lawful for the churchwardens and overseers, in any parish, town, township, or place, with the consent of the major part of the parishioners or inhabitants, in vestry or other parish or public meeting for that purpose, assembled, or of so many of them as shall be so assembled, upon usual notice thereof first given, to purchase or hire any house or houses, in the same parish, township, or place, and to contract with any person or persons for the lodging, keeping, maintaining, and employing any or all such poor in their respective parishes, townships, or places, as shall desire to receive relief or collection from the same parish, and there to keep, maintain, and employ all such poor persons, and take the benefit of the work, labour, and service of any such poor persons, who shall be kept or maintained in any such house or houses, for the better maintenance and relief of such poor persons who shall be there kept or maintained. And if any poor person of any parish, &c. where such house shall be, shall refuse to be lodged, kept, or maintained, in such house or houses, he shall be put out of the parish book, and shall not be entitled to ask or receive relief from the churchwardens and overseers.

9 G. 1. c. 7. Overseers may contract for the maintenance and employment of the poor.

§ 4. And where any parish, town, or township shall be too small to purchase or hire such house or houses, it shall be lawful for two or more such parishes, towns, or townships, or places, with the consent of the major part of the parishioners or inhabitants of their respective parishes, &c. in vestry or other parish or public meeting for that purpose assembled, or of so many of them as shall be so assembled, upon usual notice thereof first given, and with the approbation of any justice of peace dwelling in or near any such parish, &c. signified under his hand and seal, to unite in purchasing, hiring, or taking such house, for the lodging, keeping and maintaining of the poor of the several parishes, townships, or places so uniting, and there to keep, maintain, and employ the poor of the respective parishes so uniting, and to take and have the benefit of the work, labour, or service of any poor there kept and maintained, for the better maintenance and relief of the poor there kept, maintained, and employed; and if any poor in the respective parishes, &c. so uniting, shall refuse to be lodged, kept, and maintained in the house hired or taken for such uniting parishes, townships, or places, he shall be put out of the collection book, and not entitled to ask relief.

Two or more places may join.

§ 4. And it shall be lawful for the churchwardens and overseers of any parish, &c. with the consent of the major part of the parishioners or inhabitants of the said parish, &c. where such house or houses shall be purchased or hired for the purposes aforesaid, in vestry or other parish or public meeting for that purpose assembled, or of so many of them as shall be so assembled, upon usual notice thereof first given, to contract with the churchwardens and overseers of any other parish, &c. for the lodging, maintaining, or employing of any poor person or persons of such other parish, township, or place, as to them shall seem meet; and if any poor

person of such other parish, &c. shall refuse to be lodged, maintained, and employed in such house or houses, he shall be put out of the collection book, and not be entitled to have relief. Provided that no poor person, his apprentice or child, shall acquire a settlement in the parish, town, or place, to which he shall be removed by virtue of this act; but his and their settlement shall be and remain in such parish, town, or place, as it was before such removal.

Not to acquire a settlement.

The above mentioned stat. 9 *Geo.* 1. *c.* 7. hath been very beneficial in practice; but the matter seemeth at length to have been carried too far; the overseers in many places having found out a method of contracting with some obnoxious person, of savage disposition, for the maintenance of the poor; not with any intention of the poor being better provided for, but to hang over them *in terrorem*, if they will not be satisfied with the pittance which the overseers think fit to allow them. And one such task-master oftentimes undertakes for the poor of several parishes or townships. But the justices have power, by withholding their assent, to prevent any bad use being made of this kind of traffic; and such power cannot be exercised with too much vigilance.

45 G. 3. c. 54. No contract to be valid unless the contractor shall be resident in the parish in which the poor shall be maintained, &c.

By stat. 45 *Geo.* 3. *c.* 54. It is enacted, that no contract to be entered into and made by the churchwardens and overseers of the poor of any parish with any person for the lodging, keeping, maintaining, or employing of the poor of such parish or parishes where two or more are united, and for taking the benefit of their work, labour, and service, for their better maintenance and relief, by virtue of stat. 9 *Geo.* 1. *c.* 7. or of any other law, shall be valid, unless the persons contracted with shall, and during the continuance of the contract, be resident within the parish contracting, or the particular parish within which such poor shall be lodged or maintained; or who in the case where parishes are united, shall be so resident in one of such parishes, or in the parish in which such poor shall be lodged and maintained, and unless one or more responsible householders resident in such particular parish, or in one of the parishes, and to be approved of by the churchwardens or overseers of the poor of such parish or united parishes, as the case may be, shall, at or before the time of signing such contract, by their joint and several bond, with a penalty in not less than the amount of one half of the assessment to the poor's rates of such parish or united parishes, for the year next but one preceding the year in which such contract shall be entered into, give security to the said churchwardens and overseers, as the case may be, for the true and faithful observance of such contract on the part and behalf of the person so to be contracted with as aforesaid: nor unless such contract shall be approved of and signed by two justices acting for such county, &c. where such parish or united parishes, or one of them shall be.

Contracts entered into otherwise, void.

By § 2. All such contracts entered into not according to this act, shall be absolutely void; and every such contract which shall be entered into conformably to this act, with any person who shall remove from, and cease to reside in the particular parish, or in one of the united parishes in which the poor shall be lodged, &c. before the expiration of the whole term for which the contract

shall be intended to continue, shall also from the time of such removal cease and determine. Provided that such removal shall not vacate such security as aforesaid; but the same shall continue in full force for the indemnification of the churchwardens and overseers against any loss or expence incurred in consequence of such non-performance, and of such removal.—This act not to extend to places where the poor are maintained under any special act of parliament, nor to avoid any contract entered into before this act.

Removal of contractor not to vacate the security.

By stat. 50 *Geo.* 3. *c* 50. § 2. it is enacted, that persons contracting for the maintenance of the poor of any parish or place shall, with respect to all such things as they shall contract to perform and provide for the poor, be subject to the jurisdiction and orders of justices of the peace in like manner in all respects as overseers of the poor are subject thereto; and that every order of any such justice to or upon any person so contracting, may be enforced and carried into execution by such means as the same might have been enforced and carried into execution against any overseer of the poor; and that every person so contracting for the maintenance of the poor, who shall refuse or neglect to obey any such order, shall be punishable by the like forfeitures and penalties, to be levied in the same manner as in cases of disobedience or neglect of the orders of justices by overseers of the poor.

50 G. 3. c. 50. Contractors for providing for the poor shall be subject to the jurisdiction of the justices as overseers of the poor.

See stat. 55 *Geo.* 3. *c.* 137. *ante*, page 32.

55 G. 3. c. 137. Notice of contracts for supplying workhouses to be given.

And by § 7. it is enacted, "that when and so often as any contract or contracts shall be made or entered into for the providing, furnishing, or supplying any articles, materials, or things for the use of the poor in the workhouse or workhouses of or belonging to any parish or parishes, township or townships, hamlet or hamlets, place or places, or for the erecting of any building or buildings, the expence whereof is to be defrayed out of any rate or rates, or other monies applicable to the relief of the poor, the churchwardens and overseers of the poor, or other person or persons having the management, controul, or direction of the poor in such parish or parishes, township or townships, hamlet or hamlets, place or places, shall cause notice of their intentior to enter into such contract or contracts, and of the time and place when and where they shall assemble and meet for such purpose, and of the security which will be required for the performance of such contract or contracts, to be affixed in a conspicuous manner on the outer door of the church or respective churches to which such parish or parishes, township or townships, hamlet or hamlets, place or places, shall belong, or to be inserted in one or more of the public newspapers most generally circulated in the neighbourhood, seven days at the least previous to such meeting, in order and to the intent that any person or persons willing to undertake the supplying or furnishing the same may make proposals for that purpose to such churchwardens and overseers, or other person or persons as aforesaid, at the time and place mentioned in such notice."

The churchwardens and overseers] In *Rex* v. *Beeston*, *E.* 36 *Geo.* 3. 3 *T. R.* 592. 1 *Bott*, 420. 2 *Nol. P. L.* 330. 3d *edit.* On a rule to shew cause why a *mandamus* should not issue against one of the overseers of the poor of the parish of *Drayton in Hales*, for refusing to pay his proportion of parish money in his hands to

A majority will bind the rest.

Rex v. Beeston.

the person who had contracted to maintain the poor: the question was, whether it was necessary that *all* the churchwardens and overseers should concur in making the contract, or the *majority* of them would bind the rest? It appeared that the churchwardens and overseers, with the consent of the major part of the parishioners or inhabitants in vestry assembled, in pursuance of public notice for that purpose given, had contracted for the keeping, maintaining, and employing the poor with one *Atherton*, but that three churchwardens and two overseers only agreed to the contract, and one overseer refused to join.—But the Court ordered the rule to be made absolute to compel that overseer to pay his proportion to *Atherton*.

Upon the latter part of § 4. of stat. 9 *Geo.* 1. *c.* 7. the following cases have occurred.

Paupers wanting relief, and refusing to go into the parish workhouse, the parish officer may refuse giving weekly allowance.

Rex v. *Carlisle, M.* 7 *Geo.* 3. (cited in *Rex* v. *Haigh*, 3 *T.R.* 637.) 2 *Nol. P.L.* 329. 3*d edit.* The defendant was indicted for disobeying an order of sessions. The case was this:—*Jane Carr*, the pauper, having been delivered of two bastard children, was taken into the poor house of the parish of *St. Mary's* in *Carlisle*, which had been there established according to the 9 *Geo.* 1. *c.* 7. There she and her children were maintained for a year and an half. Then the parish officers agreed to allow her 1*s.* a-week towards the maintenance of herself and children. After six months they refused to continue the payment, but offered to take her and her children again into the poor house. She prayed them to take one child, and said she would take care of the other. That being refused, she offered to take sixpence a-week. But the parish officers persisted in giving her no relief, unless she would come again into the poor house. Whereupon she applied to the general quarter sessions for the county of *Cumberland*; who made an order on the churchwardens and overseers to pay her 1*s.* a-week, towards the maintenance of herself and her two bastard children, until further order. She served the defendant, being one of the overseers, with the order, and demanded payment, which he refused, but at the same time offered (as he had done several times before the obtaining the said order) to take her and her children into the poor house. The question reserved at the assizes for the opinion of the judges was, whether under these circumstances the defendant was by law empowered to refuse payment of such weekly allowance? And the case being laid before the judges, they were all of opinion, upon considering the words of the statute, that under the circumstances of this case, the defendant was by law empowered to refuse payment of such weekly allowance.

Rex v. *Winship and Grunwell, Overseers of the Poor of the Township of Corbridge, in the County of Northumberland, M.* 11 *Geo.* 3. 5 *Burr.* 2677. *Cald.* 72. 1 *Bott*, 404. 2 *Nol. P.L.* 373. 3*d ed* In the said township a regular poor house had been established; and the several persons who received allowances from the said township had one month's notice given them to repair to the said poor house, to be maintained and provided for therein; and that from the expiration of the said month, the allowance to the said several persons from the said township should be no longer paid. *Margaret Richlieu* refused to go into the poor house, and the overseers refused to pay her her allowance. She applied to the sessions, but *it did not appear she had made oath* before the ses-

sions, pursuant to 9 *Geo.* 1. *c.* 7. § 4. Afterwards, at a general quarter sessions of the peace holden in and for the said county, an order was made in the words following; that is to say, *Margaret Richlieu* having an allowance of 2*s.* a-week payable to her out of the township of *Corbridge*, of which the sum of 6*l.* 4*s.* is now in arrear, it is ordered, that the same be immediately paid to her: and it is also ordered, that the said allowance of 2*s.* a-week be continued to be paid by the said township of *Corbridge* to the said *Margaret Richlieu*; the said township appearing, and not shewing sufficient cause to the contrary. The overseers refused to pay the same, insisting that she should go into the poor house. Upon which they were indicted. And a verdict was given against the defendants the overseers, subject to the opinion of the court of king's bench. Upon hearing the cause, the Court thought the general question to be of vast consequence to the system of the poor laws, but they gave no opinion upon the merits; holding the sessions' order to be bad and illegal upon the face of it: the sessions cannot make such an original order. And judgment was entered for the defendants.

Rex v. Winship and Grunwell.

Rex v. *North Shields*, *H.* 20 *Geo.* 3. *Doug.* 331. *Cald.* 68 1 *Bott*, 408. 2 *Nol. P. L.* 329. 3*d edit.* By order of a justice the parish officers of the township of *North Shields* were directed to pay to *Ann Irwin* of that township, wife of *Thomas Irwin*, the sum of 2*s.* 6*d.* weekly, until such time as they should be otherwise ordered, for the support of her three children by her said husband; one aged six years, one three, and one 14 months. The parish officers appealed to the quarter sessions, where the order was confirmed, and a special case stated to the following effect: There was, at the time of making the order, within the township, a poor house, established according to the statute 9 *Geo.* 1. *c.* 7., into which the parish officers were willing to receive the pauper, with her three children, and offered so to do; but she refused to go with her said three children, who were of the ages mentioned in the order. She had another child of eight years of age, for whom she did not seek relief; neither did she seek relief for herself, nor was there any order for her. Her husband was a mariner, and prisoner in *France*, and his said wife not able to provide for the said three children. The case concluded, that these children, being nurse children, the opinion of the Court was, that they ought not to be separated from their mother; and that the mother, not seeking relief herself, was not compellable to go into the workhouse.—Upon a *certiorari*, and a rule to shew cause why both the orders should not be quashed, it was argued, in support of the rule for quashing them, that the statute of 9 *Geo.* 1. *c.* 7. § 4. was to secure to parishes a benefit from the labour of persons asking relief. If parents receive assistance for the maintenance of their children, *that* in truth is a relief to them. The case therefore states improperly, that the wife had not asked relief for herself: she did *virtually*, by asking it for her children, whom she, if able, was bound to maintain. And the case of *Rex* v. *Carlisle* was relied on as in point. On the other side it was contended, that as the mother had not asked relief for herself, and the order was only for the support of her children, she was willing to let *them* go into the workhouse; and although nurse children cannot be separated by any compulsory

Whether a mother asking relief for her children be compellable to go with them to the poor house? See R. v. Haigh and another, *post*, p. 202.

R. v. North Shields.

order from their mother, she may by her consent permit the separation if she think it for their advantage. In the case of *Rex* v. *Carlisle*, the relief asked, and granted by the order, was partly *personal*, and therefore it was distinguishable from this case, and within the statute. — Ld. *Mansfield* was not present during this part of the argument. — *Willes* J. said, this was a humane order, and he wished to support it. He did not think the words of the act in the way, and inclined to adopt the distinction made by the counsel between this case and that of *Rex* v. *Carlisle*. — *Ashhurst* J. thought the act extended to the present case: that maintenance for the children was relief to the mother. There might be great inconvenience if the Court were to adopt the other construction. One object of the statute was to encourage industry, by holding out the disgrace of going into a workhouse; and if parents could obtain a maintenance for their children without being compellable to go to the workhouse, idleness would be thereby promoted among artificers and manufacturers. — *Buller* J., on the contrary, thought the distinction between this case and that of *Rex* v. *Carlisle* to be clear. The act was meant in ease of parishes; but the effect would be quite the reverse, if, when one of a numerous family wants relief, the whole must go to the parish workhouse; and, on the other hand, that the parish is not entitled to the labour of a whole family, because one of them might want relief. — The case stood over for further argument, *Willes* J. expressing a wish that it might be compromised. — And now he delivered the judgment of the Court. We think it unnecessary to give an opinion on the question which has been argued in this case, because I and my two brothers are satisfied that no appeal lies from an order of maintenance. The statute 3 *W*. 3. *c*. 11. § 11. gives a concurrent jurisdiction, in the making orders for the relief of the poor, in or out of sessions, and doth not authorise an appeal. The act of 9 *Geo*. 1. *c*. 7. makes no alteration in this respect. The reason for not giving an appeal is, that the pauper might starve while the cause was in suspense. We have spoken to several gentlemen very conversant in sessions law, and none of them ever heard of such an appeal. — And the order of sessions was quashed (because they had no jurisdiction), and the original order affirmed. (See *R*. v. *Haigh*, p. 202.)

Observations on the above cases.

[Upon this Mr. *Douglas* observes, (1 *Dougl*. 333.) that the words of stat. 3 *W*. *c*. 11. are, "by authority under the hand of one justice residing within the parish, or (if none be there dwelling) in the parts near or next adjoining, *or by order of the justices in sessions*." This, he says, it should seem, must mean *by order of the court of quarter sessions*, not of justices as individuals, when they happen to meet at the quarter sessions. Therefore he makes a query concerning the case of *Rex* v. *Winship and Grunwell*, where the Court is stated to have held, that the sessions could *not* make an original order of maintenance. — Unto which it may be added, with respect to this last case of *North Shields*, that the great fundamental statute of 43 *Eliz*. *c*. 2. § 6. enacts, that "if any person shall find himself aggrieved by any thing done by the churchwardens and overseers, or by the justices, in relation to the relief of the poor, he may appeal to the general quarter sessions, whose order therein shall be final." Which, by the rule that acts *in pari materiâ* are to be taken together and considered as one entire act,

may seem to include this case concerning the order of maintenance. The *Carlisle* case above-mentioned was upon an original order at sessions, in which the jurisdiction was not objected to, but the cause was determined on the real merits. The case of *Rex* v. *Winship and Grunwell* also was upon an original order of sessions, which order the report says was quashed, because the Court was of opinion that the sessions had no power to make such order. This present case of *North Shields* was an *appeal* against an order of a justice out of sessions, and in this case of appeal likewise the Court was of opinion that the sessions had no jurisdiction. From which two last cases it seems to follow that an order of maintenance by a private justice out of sessions is absolutely conclusive; which imports a power in this respect not usual in other like cases; especially as such justice is required by the statute to be an inhabitant of the parish, if any such be there residing, and consequently in all probability essentially interested in the poor rate. As to the matter of practice, it is certain, that nothing is more common at the sessions, than applications for the maintenance of poor persons, as well by original motion as by way of appeal from the order of private justices. In some places this makes up almost half the business of the sessions, even to a degree of ridicule among the unthinking part of mankind; as if magistrates could be better employed than in relieving the miseries of the distressed. The reason that has been sometimes alleged against removing the poor rate into the courts at *Westminster*, lest the poor might starve before the cause should be determined, doth not hold with regard to appeals against orders of maintenance. The justices' order takes effect immediately, and continues in force till altered by other legal authority. The usual way is, for the justices to order the overseer to pay to the pauper so much weekly or otherwise, *until he shall be otherwise ordered according to law to forbear the said allowance*, or, more generally, *till further order*. And this, if not acquiesced in, brings on an appeal to the sessions; where the Court enlarges, mitigates, or takes off the charge, as they shall see cause.]

Rex v. *Justices of Devon, M.* 56 *Geo.* 3. 4 *M. & S.* 421. *Gifford* moved for a rule *nisi* for a *mandamus* to the justices, to enter continuances at their next quarter sessions, upon an appeal against an order for the relief of a pauper, which appeal the justices had dismissed at the last sessions, conceiving that they had not any jurisdiction in the matter. He referred to *Burn's Justice*, Vol. IV. p. 117. 21st edit. for the author's opinion that, notwithstanding the determination in *Rex* v. *North Shields*, *Doug.* 331., an appeal lies against an order for relief; for *Burn* says that the great fundamental statute of 43 *Eliz. c.* 2. § 6. gives an appeal for any thing done by the justices in relation to the relief of the poor; which, by the rule that acts in *pari materiâ* are to be taken together and considered as one entire act, may seem to include this case concerning the order of maintenance. He also speaks of such appeals as of a practice than which nothing was more common at the sessions; and *Rex* v. *Woodsterton*, *Barnard.* 207. 247. is one instance of it. The reason assigned in *Rex* v. *North Shields* for not giving the appeal, lest while the matter is in suspense the poor should starve, does not hold, because the order continues in force until altered by legal authority.

An appeal does not lie to the quarter sessions against an [order] for relief.

And the 43 *Eliz.* does not seem to have been adverted to in that case. Here, if there be no appeal there is no remedy; for the objection to the order is, that it is to a wrong parish: yet if the overseers acting upon this were indicted for disobeying the order, the Court would not, upon such a proceeding, try a question of boundary. *Per Curiam.* If in every case of an order for relief, an appeal will lie, this will divert the funds designed for the relief of the poor into other channels. This order is not *in perpetuum,* it is to pay *until further order;* and why cannot the overseers go back to the quarter where it was made, and point out that the pauper's residence is in another parish, and obtain a fresh order? Rule refused.

59 G. 3. c. 12. Power to build or enlarge workhouses.

Stat. 59 *Geo.* 3. *c.* 12. § 8. enacts, "that in any parish not having a workhouse for the poor thereof, or where the workhouse shall be found insufficient or inconvenient, it shall be lawful for the churchwardens and overseers of the poor, by the direction of the inhabitants in vestry assembled, to erect and build in such parish a suitable workhouse, or to alter and enlarge any messuage or tenement belonging to such parish for that purpose, and to purchase or take on lease any ground within the parish for the purpose of such building, or for enlarging any such other messuage or tenement belonging to such parish for that purpose; or such churchwardens and overseers may and they are hereby authorised to add to and enlarge any such insufficient workhouse, as the inhabitants of the parish in vestry shall think fit and direct."

Workhouses insufficient may be sold.

§ 9. "And whereas it would be advisable to enable parishes to sell and dispose of their present workhouses, or any other houses or tenements belonging to such parishes, in cases where the same are insufficient and incapable of being enlarged or used as workhouses, and to apply the produce thereof in aid of building new workhouses; be it therefore enacted, that it shall and may be lawful for the churchwardens and overseers of the poor of any parish, and they are hereby authorised, by the direction of the inhabitants in vestry assembled, and with the consent of two justices, to be certified under their hands, to sell and dispose of any workhouse, or any other houses or tenements belonging to such parish which shall be found to be insufficient or unfit for the purpose, with the site thereof, and the outhouses, offices, yards, and gardens thereto belonging, for the best price and prices that can be reasonably obtained, and to convey and assure the same to the purchaser or purchasers thereof, his, her, or their heirs and assigns, or as he, she, or they shall direct, and to apply the produce of such sale, after deducting the reasonable expences thereof, towards the purchase or building of a new workhouse, or in or towards the payment of any money to be borrowed under the authority of this act, as the inhabitants in vestry shall direct."

Where no poorhouse, &c can be procured in the parish, adjoining parish may be resorted to.

§ 10. "And whereas there may be parishes in which no sufficient poorhouse or workhouse can be procured for the accommodation of the poor thereof; be it further enacted, that it shall and may be lawful for the churchwardens and overseers of the poor of every such parish, by the direction of the inhabitants thereof, in vestry assembled, to purchase or hire any suitable and convenient house or houses, building or buildings, for that purpose, in any adjoining parish, with the consent of two or more justices, such consent to be written upon or annexed to the

agreement for purchasing or hiring such house or houses, building or buildings: provided always, that no such house or building shall be situate more than three miles from the parish for which the same shall be purchased or hired." 59 G. 3. c. 12.

§ 14. Provides, "that no sum exceeding the amount of a rate or assessment at one shilling in the pound upon the annual value of the property in any parish assessable to the rates for the relief of the poor, shall be raised, expended, or applied in any one year, in purchasing, building, and repairing any buildings or land by this act authorised to be purchased, taken, built, or repaired, and in fitting up, preparing, and furnishing such buildings, and in stocking such land, or for any one or more of such purposes or objects, unless the major part of the inhabitants and occupiers assessed to the relief of the poor, in vestry assembled, shall consent thereto, nor until two-third parts in value of all the inhabitants and occupiers so assessed as aforesaid (whether present in vestry or not) shall have also signed their consent thereto in the vestry or parish book."

Limiting the amount to be raised for buildings, and the purchase of lands, &c.

§ 15. Enacts, "that in every case where the inhabitants of any parish shall in manner aforesaid consent that a greater sum than the amount of a rate or assessment of one shilling in the pound will raise, shall be expended in one year for all or any of such purposes and objects, it shall be lawful for the churchwardens and overseers of the poor of such parish, with the consent of such majority as aforesaid of the inhabitants and occupiers thereof, to be given and signed in the manner herein-before directed (after the rate or rates at or amounting to one shilling in the pound shall have been actually levied and applied for such purposes or some of them), to raise any additional sum or sums, by loan, or by sale of an annuity or of annuities or any life or lives, not being under the age of fifty years respectively, or for any certain term not exceeding fifteen years, so as the whole sum to be raised for all or any of such purposes by loan, and by the sale of annuities, or by either of such means, shall not be more than five shillings in the pound of or upon the true annual value of the property which shall in such parish be assessed to the poor's rates (every proposal for any such annuity being first stated to and approved by the inhabitants and occupiers of such parish in vestry assembled); and the churchwardens and overseers of the poor shall and they are hereby authorised, in the names and on the behalf of the inhabitants of the parish, to sign and execute securities for the money which shall be so borrowed, and for the annuities to be so granted; and by every such security to charge the produce of the future rates to be made for the relief of the poor of every such parish with the repayment of the principal sum which shall have been so borrowed, and the interest thereof, or with the payment of the annuity thereby granted (as the case may be), at and upon the days and times, and in such manner and proportions, as in and by the security for every such loan and annuity respectively shall be appointed and expressed for the payment thereof; and the money to be raised by such future rates shall be subject and liable to the payment of every such loan and the interest thereof, and of every such annuity accordingly."

Power to raise further sums by loans, or by the sale of annuities.

Future rates charged with loans and annuities.

§ 16. Provides, "that no greater sum in the whole than the amount of a rate or assessment at one shilling in the pound, shall

No greater rate than 1*s.* in the

59 G. 3. c. 12.

pound shall be charged on future rates, unless with consent of two-thirds in value of the proprietors of premises.

in any parish be charged upon the future rates thereof, unless two-third parts in value of the proprietors of messuages, lands, and tenements within such parish (whether for estates of freehold or copyhold, or by virtue of leases for terms of not less than fifteen years absolute or determinable upon a life or lives) shall have consented to raise the money for which the charge or security shall purport to be made; such consents to be given by writing under the hands of all persons and corporations sole, and the consent of every corporation aggregate under the hand of the president, head, or chief member thereof for the time being, and the consents of femes covert, minors, insane persons, and persons out of the kingdom, by and under the hands of their respective husbands, guardians, committees, trustees, attornies or agents, who are respectively authorised to give such consents, and the consent of the major part of the trustees for any charitable or other purpose shall be sufficient in respect of the trust estates."

Churchwardens and overseers may take and sue as bodies corporate.

§ 17. Enacts, "that all buildings, lands, and hereditaments, which shall be purchased, hired, or taken on lease by the churchwardens and overseers of the poor of any parish, by the authority and for any of the purposes of this act, shall be conveyed, demised, and assured to the churchwardens and overseers of the poor of every such parish respectively, and their successors, in trust for the parish; and such churchwardens and overseers of the poor, and their successors, shall and may and they are hereby empowered to accept, take, and hold, in the nature of a body corporate, for and on behalf of the parish, all such buildings, lands, and hereditaments, and also all other buildings, lands, and hereditaments, belonging to such parish; and in all actions, suits, indictments, and other proceedings for or in relation to any such buildings, lands, or hereditaments, or the rent thereof, or for or in relation to any other buildings, lands, or hereditaments belonging to such parish, or the rent thereof, and in all actions and proceedings upon or in relation to any bond to be given for the faithful execution of the office of an assistant overseer, it shall be sufficient to name the churchwardens and overseers of the poor for the time being, describing them as the churchwardens and overseers of the poor of the parish for which they shall act, and naming such parish; and no action or suit, indictment or other proceeding, shall cease, abate, or be discontinued, quashed, defeated, or impeded, by the death of the churchwardens and overseers named in such proceeding, or the deaths or death of any of them, or by their removal or the removal of any of them from, or the expiration of, their respective offices."

Indictments.

Bonds.

Incapacitated persons empowered to convey. Powers and directions of 22 G. 3 c. 83. as to sales, &c. applied to this act.

§ 18. Enacts, "that the clauses, powers, provisions, and directions contained in stat. 22 *Geo.* 3. *c.* 83. for the purpose of enabling bodies politic and corporate, trustees, guardians, and incapacitated persons to contract for the sale of and to convey and lease lands, tenements, and hereditaments, for the purposes in that act expressed, and for and with regard to the payment and application of the purchase money to be paid for the lands, tenements, and hereditaments to be purchased by virtue of the said act, shall extend and be applied to all lands, tenements, and hereditaments to be purchased, hired, or taken for the purposes and under the authority of this act, and to the payment and ap-

plication of the purchase money for the same, as fully and effectually to all intents and purposes as if such clauses, powers, provisions, and directions were herein repeated and contained, and were hereby expressly enacted and applied to lands and buildings, to be purchased and taken on lease for any of the purposes of this act. 59 G. 3. c. 12.

Rex v. *James Haigh and Another, E.* 30 *Geo.* 3. 3 *T. R.* 637. 2 *Nol. P. L.* 329. 3*d edit.* The defendants (the churchwarden and overseer of *Shelf* in the West Riding of *York*) were indicted for disobeying an order of a justice, for the payment of a weekly sum to *Mary Gray* for the maintenance of her bastard child. At the trial before *Buller* J. at the *York* assizes, it appeared that the mother applied for relief for her child only; and the question was, whether the defendants were bound to obey the order, as the mother of the child refused to go into the workhouse? A verdict was given for the prosecutor, subject to the opinion of the Court on the above question. For the prosecutor, *Rex* v. *North Shields*, *Cald.*68. (*ante*, p.196.) was relied upon; and for the defendants, *Rex* v. *Carlisle*, (*ante*, p. 195.)—The words of the 9 *Geo.* 1. c. 7. § 4. are "in case any poor person in any parish where any such house shall be so purchased, shall refuse to be lodged, kept, or maintained in such house, such poor person or persons, so refusing, shall be put out of the book where the names of the persons who ought to receive collection are registered, and shall not be entitled to ask or receive collection or relief from the churchwardens or overseers."—Lord *Kenyon* C. J. The only question is, for whom was the relief asked? For such person only is, according to the terms of this act of parliament, to be sent to the workhouse. It is stated that the *child* only wanted relief: the application indeed was made by the mother, but it was not on her own account, but for her child only, who was of too tender an age to apply herself. This is, therefore, very distinguishable from the case of *Rex* v. *Carlisle*, where the relief was asked both for the parent and the child. It would be extremely hard, and contrary to the spirit and words of this act of parliament, if, when all the children of a family, except one, were capable of supporting themselves, and that one was unable to maintain itself, and was under the necessity of receiving relief, the whole family were to be sent to the workhouse.

When a mother asks for relief for her child only, and not for herself, the parish officers cannot compel her to go into the workhouse; and if she refuse, they cannot refuse the allowance to the child.

But by stat. 36 *Geo.* 3. *c.* 23. § 1. It shall be lawful for the overseer or overseers of any parish or place, with the approbation of the parishioners or a majority of them in vestry or other usual place of meeting assembled, or with the approbation in writing of one justice usually acting in and for the district, to give relief to any poor person at his own home or house, under certain circumstances of temporary illness or distress, and in certain cases respecting such poor person or his family, or respecting the situation, health, or condition of any poorhouse erected in pursuance of stat. 9 *Geo.* 1. *c.* 7. although such poor person shall refuse to be lodged, kept, and maintained in such poorhouse: any thing in the said act to the contrary notwithstanding.

36 G. 3. c. 23. Poor may be relieved out of workhouses.

§ 2. And any justice for the county, city, &c. usually acting in the district where the same shall be situate, may at his just discretion order relief to any industrious poor person, and he shall be entitled to ask and receive such relief at his home notwith-

One justice may order relief to paupers at their own homes.

36 G. 3. c. 23. standing any contract shall have been made for maintaining the poor in such poorhouse as aforesaid: and the churchwardens and overseers are to obey and perform such order for relief given by such justice as aforesaid.

For not exceeding one month. § 3. Provided that the special cause of ordering relief to any poor person at his home, be assigned and written on each order for relief so given as aforesaid; and provided always, that such order shall be given for, and do remain in force for a time not exceeding one month from the date thereof.

Two justices may order relief for a further time. Provided also, that two justices may make any further order for the same or the like purpose, for any further time not exceeding one month from the date thereof, and so on from time to time as the occasion shall require; such justice or justices first administering an oath as to the need and cause of such relief in each of the above cases, and thereon summoning the overseer or overseers to shew cause why such poor person should not receive such relief in manner as by law provided in cases where no contract for lodging, keeping, and maintaining the poor shall as aforesaid have been made.

55 G. 3. c. 137. The time for which justices may order relief to poor persons at their own homes extended. By stat. *55 Geo.* 3. *c.* 137. § 3. after reciting stat. 36 *Geo.* 3. *c.* 23. § 2 & 3. and that it is expedient that justices should be empowered to order relief to be paid to poor persons, in the cases mentioned in the said act, for longer periods than one month at a time; it is enacted, that it shall be lawful for any justice or justices of the peace, in the cases and in the manner mentioned in the said act, to direct and order collection and relief to be paid to any poor person or persons at his, her, or their home or homes, house or houses, during such time or times as to such justice or justices may seem proper, not exceeding three months from the date of such order: provided also, that it shall and may be lawful for any two such justices as aforesaid to make any further order for the same or the like purpose for any further time not exceeding six months from the date of such order, and so on from time to time as the occasion shall require; such justice or justices first administering an oath as to the need and cause of such relief in each of the above cases, and thereupon summoning the overseer or overseers of the poor of the parish, town, township, or place to be charged with such relief, to shew cause why such poor person or persons should not receive such relief in manner as by law provided in cases where no contract for lodging, keeping, and maintaining the poor shall have been made; and in case it shall afterwards appear to the justice or justices making such order, that the payment of such collection or relief to any such person or persons as aforesaid ought to be discontinued before the expiration of the time for which any such order or orders shall have been made, such justice or justices shall and may order such relief to be discontinued, and from thenceforth the person or persons for whom and on whose account such order shall have been made shall not be entitled to ask or receive the same.

Further time not to exceed six months.

Justices making such orders may direct the payment of relief to be discontinued.

Limitation of allowances in certain cases. § 4. Provides and enacts, that the sum or sums of money which any such justice or justices shall or may order to be paid to any such poor person or persons for any longer space or period of time than one month, shall not exceed, for each such poor person, the sum of three shillings *per* week, or three-fourths of the average

weekly expense which shall be usually borne or paid by the parish or place on which such order shall be made for the maintenance of each poor person in any workhouse or workhouses in which poor persons of or belonging to such parish or place shall be usually maintained and employed. 35 G. 3. c. 1

See also stat. 59 *Geo.* 3. *c.* 12. § 2. *post,* § III. (7.)

Stat. 36 *Geo.* 3. *c.* 23. § 4. Provides that nothing therein shall extend to places where houses of industry or other places have been or shall be provided under the authority of 22 *Geo.* 3. *c.* 83. (*a*), or of any special act for any parish or place now in force; but in every such case, such poor persons shall be relieved in the same manner as before the passing of that act. 36 G. 3. c. 23. Not to extend to houses established by 22 G. 3. c. 83.

By stat. 30 *Geo.* 3. *c.* 49. § 1. [See *Rex* v. *Laughton, post,* § III. (7.)] Any justice of the peace, (or any physician, surgeon, apothecary, or officiating clergyman of the parish or place authorised by a warrant from under the hand and seal of any such justice) may in the day time visit any parish workhouse, or house kept or provided for the maintenance of the poor of any parish or place within the county, &c. or division wherein such justice shall reside, and have jurisdiction and examine into the condition of the poor people therein, and the food, bedding, and clothing, and the condition of such house; and if any cause of complaint shall be found, such justice, or person authorised as aforesaid, may certify the state and condition of such house, and of the poor therein, and of their food, clothing, and bedding, to the next quarter sessions for the county, &c. or division where such house shall be situate, under his hand and seal; and such justice, or other person authorised as aforesaid, shall cause the overseers of the poor, or master or governor of the said workhouse or poorhouse, to be summoned to appear at the same sessions to answer such complaint; and the justices there on hearing the parties, shall make such orders and regulations for the removing such cause of complaint as to them shall seem meet, and all the parties shall abide by the same. 30 G. 3. c. 49. Justices, &c. may visit parish workhouses.

§ 2. Provided, that in case such justice, or person authorised as aforesaid, shall, upon such visitation, find any of the poor afflicted with any contagious or infectious disease, or in want of immediate medical or other assistance, or of sufficient and proper food, or requiring separation or removal from the other poor in the said house, then if such visitation be made by a justice, he shall apply to another justice of such county, &c. or division, and certify to him the state and condition of the poor in such house; or if such visitation is made by such other persons authorised as aforesaid, they shall apply to two justices of such county, &c. or division, who shall make such order for the immediate procuring medical or other assistance, or of sufficient and proper food, or for the separation or removal of such poor as shall be afflicted with any contagious or infectious disease, in such manner as they under their hands and seals shall think proper to direct, until the next quarter sessions, at which sessions they are to certify the same under their hands and seals to the sessions who are to make such order for the further relief of the poor in such workhouse or poor- Finding the poor afflicted with contagious or infectious disease.

(*a*) See this act *post,* title "Poor, *in incorporated districts.*"

30 G. 3. c. 49. house as to them shall seem meet. And the charges of relieving such poor shall be paid out of the poor's rate of such place in such manner as such sessions shall direct. (See *R.* v. *Warren*, *ante*, p. 188. note (*a*).

§ 3. Provided that the above shall not extend to workhouses regulated by any special act of parliament.

50 G. 3. c. 50. Justices may appoint the keeper of the workhouse to be the governor. A.

By stat. 50 *Geo.* 3. *c.* 50. § 3. It shall be lawful for the justices in any special session, upon the application of the overseers of the poor of any parish or place, or of the major part of them to appoint (A) the keeper of the workhouse of any such parish or place to be the governor thereof; and the keeper so appointed so long as he shall continue keeper of such workhouse until the justices in any such special session shall revoke such appointment (which they are hereby empowered to do), shall have, use, and exercise the powers, and perform the duties by the act of the 22 *Geo.* 3. *c.* 83. (*vide post.*) vested in and imposed upon governors of the poor.

Penalty on embezzling goods.

§ 4. "If any person who shall be sent to any poorhouse or workhouse shall embezzle, or wilfully waste, spoil, or damage any of the clothing, goods, or materials committed to his or her care, or shall take or carry away, without permission of the overseer of the poor or keeper of the said workhouse, any clothing, goods, or materials provided for the use of such poorhouse, or of any of the poor therein, complaint thereof may be made upon oath to one or more justices of the peace acting for the district or division in which such parish shall be situate; and such justices are hereby authorised to hear such complaint, and upon conviction to commit the offender to the house of correction, there to be kept to hard labour for any time not exceeding two calendar months, nor less than seven days.

Power of justices to commit offenders.

54 G. 3. c. 170. Masters, &c. of poorhouse not to punish or confine beyond a limited time.

Stat. 54 *Geo.* 3. *c.* 170. § 7. Enacts, "that it shall not be lawful for the master, governor, or other person entrusted with the superintendance of any house for the reception of poor persons, or the churchwarden, overseer, or other persons elected, constituted, or appointed, by or under the authority of any act or acts of parliament for the controul or management of the poor of any district, parish, township, or hamlet, to punish with any corporal punishment whatsoever, any adult person or persons under his, her, or their care or charge, for any offence or mis-

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(A) Workhouse Governor's Appointment; by stat. 50 *Geo.* 3. *c.* 50. § 3.

County of ——— } *At a Special Sessions held at* ——— *in the county of* ——— *this* ——— *day of* ——— *one thousand eight hundred and* ——— *by* ——— *justices of the peace for the said county, acting for the hundred of* ——— *within the same county.*

UPON the application of the major part of the overseers of the poor of the parish of ——— in the said county and hundred, to us whose hands and seals are hereunto affixed, being justices of the peace acting in and for the aforesaid county and hundred, we do hereby appoint *A. G.* keeper of the workhouse of the said parish of ——— to be governor thereof; and so long as the said *A. G.* shall continue keeper of the said workhouse, until the justices, in any special sessions, shall revoke this appointment, he is hereby authorised to use and exercise the powers, and perform the duties vested in, and imposed upon, governors of the poor, by an act passed in the twenty-second year of the reign of king *George* the third, according to an act passed in the fiftieth year of the reign of the same king. Given under our hands and seals the day and year above written.

behaviour whatsoever; or to confine any such person or persons whatsoever, for any offence or misbehaviour, for any longer or greater space of time than 24 hours, or such further space of time as may be necessary, in order to have such person or persons before a justice of the peace; any thing in any act or acts of parliament contained to the contrary in anywise notwithstanding." 54 G. 3. c. 170.

And stat. 56 *Geo.* 3. *c.* 129. § 2. Enacts, that it shall not be lawful for any governor, director, guardian or master, of any house of industry, or workhouse, on any pretence, to chain, or confine by chains or manacles, any poor person of sane mind. 56 G. 3. c. 129. Confining the poor by chains or manacles unlawful.

By stat. 55 *Geo.* 3. *c.* 137. § 1. After reciting, "that many persons received into public workhouses established for the relief, maintenance, and employment of the poor, pawn and dispose of their clothes and apparel, and the goods and chattels deposited in or belonging to such workhouses; and poor persons relieved by having clothes and apparel given them by the officers of parishes, frequently pawn and sell the same; and by the laws now in force no punishment can be inflicted on them, or on the person or persons buying or receiving the same into pawn." For remedy whereof, it is enacted, "That the property of and in all and singular the goods, chattels, furniture, provisions, clothes, linen and wearing apparel, tools, utensils, materials, and things whatsoever, had and to be had, bought, procured, or provided for the use of the poor of any parish or parishes, township or townships, hamlet or hamlets, place or places, shall be and the same is hereby vested in the overseers of the poor of such parish or parishes, township or townships, hamlet or hamlets, place or places, for the time being, and their successors in office, for the purposes of this act, who are hereby empowered to bring or cause to be brought any action or actions, or to prefer or order the preferring of any bill or bills of indictment against any person or persons who shall steal, take or carry away, or buy or receive, any such goods, chattels, provisions, clothes, linen, furniture, wearing apparel, tools, utensils, materials, or things whatsoever as aforesaid, or any part thereof; and in every such action and indictment the said goods, chattels, provisions, clothes, linen, wearing apparel, tools, utensils, materials, and things shall be laid or described to be the property of the overseers of the poor for the time being of such parish or parishes, township or townships, hamlet or hamlets, place or places, without stating or specifying the name or names of all or any of such overseers; Provided always, that nothing herein contained shall extend to repeal any of the provisions contained in any act or acts of parliament, whereby the property of and in any such goods, chattels, furniture, provisions, clothes, linen, wearing apparel, tools, utensils, materials, and things, is or may be vested in any other person or persons jointly with or independent of the overseers of the poor of any parish or parishes, township or townships, hamlet or hamlets, place or places." (See *R.* v. *Went*, Vol. III. Larceny, § I.)

55 G. 3. c. 137.

Property in goods, &c. provided for the use of the poor, to be vested in overseers.

Vide Vol. III.

Not to repeal provisions in local acts.

§ 2. Enacts, "that the overseers of the poor, or other person or persons who may be appointed for the ordering, regulating, managing, or providing for the poor of any parish or parishes, township or townships, hamlet or hamlets, place or places, jointly with or independent of such overseers of the poor, shall or may, and they are hereby authorised and empowered to cause all such goods, chattels, furniture, clothes, linen, wearing apparel, tools,

Parish officers may cause goods, &c. to be marked.

1 G. 3. c 137. utensils, materials, and things capable of being marked, and from time to time belonging to such overseers, or other person or persons, to be marked, stamped, or branded with the word "workhouse," and such other mark or marks as they shall think proper for identifying the parish or parishes, township or townships, hamlet or hamlets, place or places, by which the same shall have been provided: And if any pawnbroker or other person or persons shall knowingly take in pawn, buy, exchange, or receive any goods, chattels, furniture, clothes, linen, wearing apparel, tools, utensils, materials, and things provided for the use of any of the poor who are or shall be received into the workhouse of any parish or parishes, township or townships, hamlet or hamlets, place or places, or to whom the same shall have been given by the overseers of the poor, or other such person or persons as aforesaid, appointed as aforesaid, of or for any such parish or parishes, township or townships, hamlet or hamlets, place or places, or any of them, or any of the goods or materials carried into any such workhouse or workhouses, to be wrought up, manufactured, or used by the poor there, or any of the goods or furniture of such workhouse or workhouses: or shall receive or buy any of the provisions allotted to or provided for the poor of such workhouse or workhouses, or shall be aiding or assisting therein: or if any person or persons shall cause such mark or stamp, marks or stamps, as aforesaid, to be obliterated or defaced, every person so offending shall forfeit for every such offence any sum not exceeding the sum of five pounds, nor less than one pound, upon conviction thereof, either by the confession of such person or persons, or by the oath of one or more credible witness or witnesses, before any one or more of H. M.'s justices of the peace of the county, city, town, riding, or division wherein the offence or offences shall be committed; one moiety of which said penalty shall go to the informer or informers, and the other moiety shall go and be paid to the overseers of the poor of the parish or parishes, township or townships, hamlet or hamlets, place or places to which such articles or things may belong, for the use of the poor of such parish or parishes, township or townships, hamlet or hamlets, place or places; and in case any person or persons who shall be convicted as aforesaid, shall not pay such penalty or penalties upon conviction, then and in such case such justice or justices of the peace shall and may and is and are hereby required to commit such offender or offenders to the common gaol or house of correction, there to remain without bail or mainprise for any space of time not exceeding two calendar months; and if any person or persons shall desert or run away from any workhouse or workhouses, and carry away with him, her, or them, any clothes, linen, or other goods or things as aforesaid, such person or persons being therefore lawfully convicted either by the confession of such party or parties, or by the oath or oaths of one or more credible witness or witnesses, before any justice or justices of the peace, shall by such justice or justices of the peace be forthwith committed to the common gaol or house of correction, there to remain without bail or mainprise for the space of three calendar months; and in all cases such mark, stamp, or brand, on any such articles or things as aforesaid (being duly authenticated) shall be considered and taken to be sufficient

Penalty on persons buying or receiving into pawn any property provided for the poor by parish officers;

or defacing marks.

Penalty.

Application of penalty.

On nonpayment of penalty, offenders to be committed.

Persons absconding with workhouse property, to be committed.

Mark or stamp on articles to be evidence of the right of property.

evidence, without further proof, of the right of property in such overseers or other person or persons appointed as aforesaid, as the case may be: provided always, that such mark or stamp as aforesaid shall not at any time be placed on any articles of wearing apparel so as to be publicly visible on the exterior of the same." *55 G. 3. c. 137.* Mark not to be put on the outside of wearing apparel.

§ 5. And whereas persons maintained in public workhouses sometimes refuse to work, or are guilty of drunkenness and other misbehaviour, and by the laws in being no sufficient punishment is provided for such offences; it is therefore enacted, that in case any person or persons maintained in any public workhouse or workhouses established for the relief, maintenance, and employment of the poor, shall refuse to work at any work, occupation, or employment suited to his, her, or their age, strength, and capacity, or shall be guilty of drunkenness or other misbehaviour, every such person or persons being thereof lawfully convicted before any justice or justices of the peace, shall thereupon by such justice or justices of the peace be committed to the common gaol or house of correction, there to remain without bail or mainprise for any period of time not exceeding twenty-one days, and during such time to be kept to hard labour. Persons guilty of misbehaviour in workhouses may be committed.

§ 8. Enacts, that all justices of the peace before whom any person or persons shall be convicted of any offence against this act, shall and may cause the conviction to be drawn up in the following form, or to the like effect; (that is to say,)

BE it remembered, that on the ——— *day of* ——— *in the year of our Lord* ——— A. B. *is duly convicted before* ——— *of his majesty's justices of the peace for the county of* ——— [or *city*, or *liberty, of* ——— as the case may be] *of having* [here state the offence] *contrary to the statute in that case made and provided. Given under my hand and seal* [or *our hands and seals*, as the case may be] *the day and year first above written.* Form of conviction.

And such conviction shall be good and effectual in law to all intents and purposes, and shall not be quashed or set aside, or adjudged void or insufficient, for want of any other form of words whatever: nor shall the same be removed by *certiorari*, or any other writ or process whatsoever, into any of H. M.'s courts of record at *Westminster*. Conviction not to be set aside for want of form.

§ 9. Provides, that if any person shall think himself aggrieved by the judgment of such justice or justices, such person may appeal to the next general or quarter sessions of the peace to be held for the county, city, or place wherein the cause of complaint shall have arisen; such person, at the time of his conviction, entering into a recognizance with two sufficient sureties, conditioned personally to appear at the said sessions to try such appeal, and to abide the further judgment of the justices at such sessions assembled; and the said justices at such general or quarter sessions shall hear and determine the causes and matters of such appeal in a summary way, and the determination of such justices at sessions shall be final. Appeal to the quarter sessions. Recognizances, to be entered into. Decision to be final.

Stat. 56 *Geo.* 3. *c.* 129. after reciting that divers local acts of parliament have lately passed, containing enactments relative to the maintenance and regulation of the poor, varying the general law with respect to particular districts, parishes, townships, or hamlets; and it is expedient that some of such 56 G. 3. c. 129 Certain enactments in local poor acts, passed since the

58 G. 3. c. 129. — commencement of the reign of Geo. I. repealed.

enactments should be repealed; enacts, that all enactments and provisions, contained in any act or acts of parliament since the commencement of the reign of his late majesty king *George* the first, whereby any poor person or persons, other than such as shall actually apply for and receive parochial relief, are compelled or made compellable to go or remain in any house of industry or workhouse; or whereby any poor person or persons may be detained or kept in any house of industry or workhouse; at the discretion of the governors or directors thereof, or of the churchwardens or overseers of the poor of any district, parish, township or hamlet, after such persons are capable of maintaining themselves; or whereby any poor person or persons may be compelled to remain in any house of industry or workhouse, until the charges and expences to which any district, parish, township, or hamlet may have been put or become liable or chargeable for the maintenance or support of such poor person or persons, or any of his or her family, shall be repaid or reimbursed or satisfied by the earnings or labour of such poor person or persons; or whereby any poor child or children whomsoever is or are rendered liable to be apprenticed to any governor, director, or master of any such house of industry or workhouse; or whereby any parish, township, or hamlet, at a greater distance than ten miles from such house of industry or workhouse, shall hereafter be empowered or authorised to become contributors to, or to take the benefit of such house of industry or workhouse; or whereby any directors, governors, guardians, or masters of any such house of industry or workhouse, are authorized or empowered to hire out any poor person or persons of full age, or to contract or agree with any person or persons to have and take the profit of the labour of such poor person or persons; shall be wholly and severally, and the same are hereby wholly and severally, repealed.

Whether a poor house purchased under the statute 9 G. 1. c. 7. by joint parishes, in a third parish is not, for the purpose of settlement, a part of the purchasing parish? At all events the paupers are not removeable.

Rex v. *St. Peter and St. Paul in Bath*, *T.* 22 *Geo.* 3. *Cald.* 213. 1 *Bott*, 443. 2 *Nol. P. L.* 148. 333. *William Hill* was removed from *Lyncombe* and *Widcombe* to *St. Peter and St. Paul.* The sessions confirmed the order, and stated the following case:— That the parishioners of *St. Peter and St. Paul*, in conjunction with the parishioners of *St. James* in *Bath*, purchased a piece of ground in the parish of *Lyncombe* and *Widcombe*, and built thereon a house for the reception and maintenance of their poor. And the said *William Hill*, together with the rest of the paupers belonging to the said parish of *St. Peter and St. Paul*, removed to the said house, where they have been maintained ever since, without any charge to the said parish of *Lyncombe* and *Widcombe.* The said *Hill* and all the other paupers carried with them regular certificates, which were delivered to the parish officers of *Lyncombe* and *Widcombe.* Notwithstanding which the pauper was removed from *Lyncombe* and *Widcombe*, though he had not been chargeable to that parish. The sessions confirmed the order, being of opinion, that the pauper was not an object of the certificate act, and consequently not protected by it.—*Howarth* and others shewed cause in support of these orders.—Ld. *Mansfield* C. J. (without hearing the other side) said, To be sure it was a radical defect in the system of the poor laws, more especially in a commercial and manufacturing country, that the poor should be all confined to their respective parishes. Possessed of in-

dustry, vigour, and skill, a man who could not find work at home, was prohibited from seeking it abroad.* The legislature endeavoured to cure this evil by introducing certificates, under which the pauper is at liberty to go and reside wherever he pleases. And the true principle is, to extend this protection to the utmost latitude. There should be no clog, no restraint. But then the act did not compel the granting of them. The want of workhouses was however soon felt as an inconvenience; they were, not long after, introduced by the legislature; and, if well regulated, a most desirable mode of relief they are; they supply comfort and accommodation for those who cannot work, and employment for those who can. In many instances which have chanced to fall within my knowledge, particularly on the *Midland* circuit, they have reduced the annual amount of the poor rates one half. But this benefit could not within itself be received by every separate district; for where parishes were small, the expence of the necessary buildings was too heavy for them. This obstacle was foreseen by the legislature, and provided against accordingly. Though single parishes could only contract for these buildings, within their own limits, yet, where two unite, no restrictions were imposed, the power is general. It is obvious, that the workhouse of a single parish must be most conveniently situated in that parish. Upon a similar principle, where many parishes were jointly concerned, the legislature did not require that the building should be raised in either of the confederate parishes; because in such case, a spot might be found in some other parish more central and better accommodated to their general convenience, than any part of their united district. The act therefore authorises the purchase any where; and when once the joint purchase is made, wherever it be, it becomes a part of the local system of each contracting parish; and if the poor will not go there, they are not entitled to relief. The same narrow spirit that has impeded the progress of this beneficial plan, now starts up again to limit this power, and almost to overthrow the act itself: which was calculated ultimately to reduce expence, as well as promote industry and encourage manufactures, by employing all the poor under the eye of one master. But the objection is not warranted by the certificate act. Whatever might be the leading motive in passing that act, that statute authorises the whole body of the poor of whatever denomination and with whatever object, to leave their own and remove into any other parish, provided they can obtain the protection of a certificate. Contrary to the spirit and policy of the act, and not obliged by the letter, the Court will not make an exception of a case, which the act itself has not excepted. The true policy is certainly to enlarge and not to narrow the district within which the poor are to be maintained. As to the objection of its being an injury to property, the introduction of a numerous inhabitancy, by increasing the consumption of provisions, must unavoidably add to the value of that land, the produce of which is by such a demand consumed. As to the possibility of a few illegitimate children acquiring by birth a settlement in the parish within which the workhouse stands, it is impossible to foresee every inconvenience; and all that can be said is, that *de minimis non curat lex.* — *Buller* J. As to the last difficulty raised, I doubt whether the poorhouse so occupied, and become in this manner the per-

Rex v. St. Peter and St. Paul in Bath.

Advantages of workhouses.

petual property of the united parishes, is not to this purpose rather to be considered as part of those parishes to which it so belongs, than of the parish in which it is locally situated; upon the same principle as that of many resolutions in the case of such children born in gaols. — *Willes* and *Ashhurst* Js. concurring, both orders were quashed.

24 G. 2. c. 40. Spirituous liquors not to be used in workhouses.

By stat. 24 *Geo.* 2. *c.* 40. § 13. *No spirituous liquors shall be sold or used in any workhouse, or house of entertainment for parish poor;* as is set forth more at large, in the article relating to spirituous liquors, under the title Excise, Vol. II. p. 311.

Relief to Prisoners confined under Mesne Process for Debt in such Gaols as are not County Gaols.

52 G. 3. c. 160.

By stat. 52 *Geo.* 3. *c.* 160. After reciting that "great distress is suffered by poor persons confined under mesne process for debt in such gaols as are not county gaols, in consequence of their not receiving any allowance whereon to subsist during the time of such confinement," it is enacted, § 1. "that it shall be lawful for any one justice of the peace acting for the county, riding, or division wherein any gaol which is not a county gaol is situated, to order the overseers of the poor of the parish, township, or place wherein any such gaol (which is not a county gaol) shall be situated, to relieve any poor person who shall be confined in such gaol under mesne process for debt, and who shall appear to such justice to be unable to support himself or herself, and who shall have applied for relief to such overseers as aforesaid."

Justices to order parochial relief to debtors in such gaols as are not county gaols.

§ 2. Provides, "that the sum to be given for the relief of any such poor person shall not exceed sixpence *per diem*, during the time of his or her confinement in such gaol under mesne process for debt."

Limiting the sum.

§ 3. "The overseers of the poor of any such parish, township, or place to whom any such application for relief shall be made as aforesaid, if they shall doubt whether such poor person is legally settled in such parish, township, or place, shall cause him or her to be examined upon oath before one or more justice or justices of the peace, touching his or her last legal settlement, upon which examination it shall be lawful for justices to make an order for the removal of such poor person to the place of his last legal settlement, and to suspend the execution of such order of removal during the time of such person being confined in such gaol under such mesne process, which suspension of the same shall be indorsed on the said order, and signed by such justices, and the subsequent permission to execute the same shall be also indorsed on the said order, and signed by such justices, or by any other two justices of the peace acting for the same county, riding, or division."

Legal settlement of debtor to be ascertained.

Order of removal to be suspended while debtor is imprisoned,

§ 4. Provides, "that a copy of the order of removal, and of the order for suspending the execution of the same as aforesaid, shall, as soon as may be after the making thereof respectively, be served upon the overseers of the poor of the parish, township, or place in which such poor person shall by such order of removal be adjudged to be legally settled."

and to be served on the overseers of the poor of his parish,

§ 5. Enacts, "that although such poor person shall not have been actually removed in pursuance of such order of removal as aforesaid, it shall be lawful for any justice of the peace to direct

who shall repay the expence attending the pauper.

the overseers of the poor of the parish, township, or place in which such pauper is adjudged to be settled, to repay to the overseers of the poor of the parish, township, or place wherein such gaol shall be situated, all the charges proved upon oath of any such overseers of the parish, township, or place where the gaol is situated, to have been incurred in granting relief to such pauper during the time of his confinement and the suspension of such order, not exceeding 6*d.* *per diem;* and if the overseers of the parish, township, or place to which such order of removal shall be made, or any or either of them, shall refuse or neglect to pay any such sum so advanced as aforesaid within twenty-one days after demand thereof, and shall not within the same time give noti ce o appeal as is hereinafter mentioned, it shall be lawful for one justice of the peace, by warrant under his hand and seal, to cause the money so directed to be paid as aforesaid to be levied by distress and sale of the goods and chattels of the person or persons so refusing or neglecting to pay the same, and also such costs attending the same, not exceeding 40*s.*, as such justice shall direct; and if the parish, township, or place to which the removal was ordered to be made, be without the jurisdiction of the justice of the peace issuing the warrant, then such warrant shall be transmitted to any justice of the peace having jurisdiction within such parish, township, or place as aforesaid, who upon receipt thereof is hereby authorised and required to indorse the same for execution: provided nevertheless, that if the sum so ordered to be paid on account of such costs and charges exceed the sum of 5*l.* the party or parties aggrieved by such order may appeal to the next general quarter sessions for the county, riding, or division in which such gaol is situated, against the same, as they may do against an order for the removal of poor persons by any law now in being, and if the court of quarter sessions shall be of opinion that the sum so awarded be more than of right ought to have been directed to be paid, such court may and is hereby directed to strike out the sum contained in the said order, and insert the sum which, in the judgment of the said court, ought to be paid, and in every such case the said court of quarter sessions shall direct that the said order so amended shall be carried into execution by the said justices by whom the order was originally made, or either of them (*a*), by such other justice or justices as the said court shall direct."

52 G. 3. c. 160.

In case of refusal the money advanced to be levied by distress.

Appeal.

§ 6. Provides, "that it shall be lawful for the overseers of the poor of the parish, township, or place wherein such poor person shall by such order of removal, be adjudged to be legally settled, to appeal against such order to the next general quarter sessions of the peace for the county, riding, or division in which such gaol is situated, holden after the service of the copy of such order of removal, in case such copy shall have been served upon such overseers twenty-one days before the holding of such quarter sessions, but in case the same shall not be served twenty-one days before the holding of such next general quarter sessions, then the appeal may be to the next succeeding general quarter sessions holden for the said county, riding, or division, and upon such appeal the

Appeal allowe to quarter sessions

(*a*) The word *or* appears to have been omitted.

52 G. 3. c. 160. like proceedings may be had as are observed in other cases of appeals against orders of removal of poor persons by any law now in being: provided always, that in case such order of removal and suspension is not appealed against in manner aforesaid, or if upon appeal such order shall be confirmed, such poor person shall be deemed and taken to be legally settled in the parish, township, or place in which he shall by such order of removal be adjudged to be legally settled."

In case the pauper has no legal settlement in England or Wales, the allowance shall be paid out of the county rate.

§ 7. Enacts, "that in case any poor person applying for relief under the provisions of this act shall, upon his examination as to his last legal settlement, be found not to be legally settled in any parish, township, or place within *England* and *Wales*, it shall be lawful for any one justice of the peace to order the overseers of the poor of the parish, township, or place wherein the gaol is situated (in which such poor person shall be confined under mesne process for debt) to relieve such poor person with a sum not exceeding 6*d. per diem* out of the funds in their hands applicable to the relief of the poor, which sum shall be reimbursed to the overseers of the poor of the said parish, township, or place, for the use of such funds, out of the county rate, by the treasurer of the county, riding, or division in which such parish, township, or place shall be situated, at the expiration of the confinement of such poor person upon such mesne process as aforesaid.

Oath of a Poor Person wanting Maintenance.

A. P. *of* ——— *in the parish of* ——— *in the county of* ——— *maketh oath, that he is very poor and impotent, and not able to provide for himself and his family, and that on* ——— *last he did apply for relief to the parishioners of the said parish at a vestry* [or *to the select vestry of the said parish*, or other public] *meeting*, [or, *to two of the overseers of the poor of the said parish*] *and was by them refused to be relieved.* A. P.

Taken and made before me, one of his majesty's justices of the peace for the said county, the ——— *day of* ———. J. P.

Warrant thereupon to Summon the Overseers.

County of ——— to wit. } To the constables of ——— in the parish of ——— in the said county, and to every of them.

WHEREAS A. P. *of your parish, hath this day made oath before me* ——— *one of his majesty's justices of the peace in and for the said county, that he the said* A. P. *is very poor and impotent, and not able to provide for himself and his family; and that he the said* A. P. *did on* ——— *last apply to the parishioners of your said parish at a vestry* [or other public] *meeting* [or, *to* A. B. *and* C. D. *two of the overseers of the poor of the said parish*, or, *to the select vestry of the said parish,*] *and was by them refused to be relieved: These are therefore to require you in his said majesty's name to summon two of the overseers of the poor of the said parish to appear before me on* ——— *next, at the house of* ——— *in* ——— *in the said county, at the hour of* ——— *in*

the forenoon of the same day, to shew cause why relief should not be given to the said A. P. *And be you then there with this precept, to certify what you shall have done in the execution hereof. Given under my hand and seal the ——— day of ——— in the year ———.*

Order for Maintenance.

County of ——— } To the Churchwardens and Overseers of the poor of the parish of ———, in the said county.

WHEREAS A. P. *of the parish of* ———, *in the said county* ———, *hath made oath before us* [or, in a case of emergent and urgent distress, *before me,*] ——— *of his majesty's justices of the peace for the said county, that he the said* A. P. *is very poor and impotent and not able to work, and that he the said* A. P. *did on* ——— *last apply for relief to the parishioners of the said parish of* ———, *at a vestry* [or *public meeting,*] [or, *to* A. B. *and* C. D., *two of the overseers of the poor of the said parish,*] [or, *to the select vestry of the said parish,*] *and was by them refused to be relieved.*

And whereas two of the overseers of the poor of the said parish, have been duly summoned by us, [or, *me,*] *to shew cause why relief should not be given to the said* A. P. *and have appeared before us,* [or, *me,*] *in pursuance of such summons, but have not made any sufficient cause to appear as aforesaid* [or, *but have made default to appear before us,* or, *me,*] *according to the said summons.*

And whereas [stating the special cause of granting relief,] *we,* [or *I,*] *do therefore order the churchwardens and overseers of the poor of the said parish, or such of them to whom these presents shall come, to pay unto the said* A. P. *the sum of* ———, *weekly and every week, for and towards h— support and maintenance, for one month,* [or, in a case of emergency, *for fourteen days,*] [or, *till the next petty sessions to be holden at* ———,] [or, if the parish be under contract for lodging, keeping, and maintaining their poor, *for three months, unless sooner discontinued by our order,*] *from the day of the date hereof.*

Given under our hands and seals, [or, *under my hand and seal,*] *this* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———. (*a*)

Contract for Maintenance.

AT *a public meeting of the inhabitants of the parish of* ——— *in the county of* ——— *for that purpose assembled upon usual notice thereof first given; it is contracted by and with the consent of the major part of the said inhabitants so assembled as aforesaid, between* A. B. *and* C. D. *churchwardens, and* E. F. *and* G. H. *overseers of the poor of the said parish, of the one part, and* A. M. *of* ———, *in the said parish, yeoman, of the other part: That he the said* A. M. *shall and will during the space of one whole year, to commence from* ——— *next ensuing, at his own proper costs and charges, in the house in which he now dwelleth, find, provide, and allow unto all such poor people as shall be*

(*a*) The court of K. B. have no jurisdiction to grant a *mandamus* to magistrates to make an order of maintenance on a particular parish. *R.* v. *Justices of Middlesex, H.* 1 *&* 2 *G.* 4. 4 *B. & A.* 298. See Mandamus.

lawfully entitled to relief and maintenance from the said parish, and shall be brought unto him by the churchwardens or overseers of the poor aforesaid, or any of them, or by their or any of their successors for the time being, sufficient lodging, meat, drink, clothing, employment, and other things necessary for their keeping and maintenance: And that in consideration thereof, the said churchwardens and overseers of the poor, and their successors respectively, shall pay or cause to be paid to the said A. M. *the sum of* ——— *in equal proportions.*—— *The said* A. M. *to have moreover and take unto himself the benefit of the said poor people's work, labour, and service, during the said term. In witness whereof the parties to these presents have hereunto set their hands, the* ——— *day of* ———.

It may perhaps be requisite to insert a clause more particularly with respect to the article of *clothing;* setting forth in what condition they shall go, and in what condition be delivered back again. As also, if they shall *die,* who shall be at the expence of burying them, and the like. As also, if they shall be *refractory* or ungovernable, who shall be at the charge of sending them to the house of correction, &c. (vide *ante.*) And other clauses as there may be occasion.

If two parishes or townships shall join in such contracting, it will be necessary to insert in the contract the consent of the justice of the peace; as thus: ——— *by and with the consent of the major part of the said inhabitants so assembled as aforesaid respectively, and also by and with the consent of* J. P. *esq. one of his majesty's justices of the peace for the said county, dwelling in the said parish of* ——— [or, *near to the said parishes or townships of* ———.]

And the assent of the said justice may be indorsed thereon as follows:

I ——— *esq. one of his majesty's justices of the peace for the within-mentioned county of* ———, *and dwelling in the within-mentioned parish of* ———, [or *near to the within-mentioned parishes or townships of* ———,] *do consent unto, allow, and approve of the within-written contract. Given under my hand and seal, the day of*—

(5.) Of the Regulations of Parish Vestries under stats. 58 Geo. 3. c. 69. and 59 Geo. 3. c. 85.

[*See Vol. I., tit.* Churchwardens, § III.]

58 G. 3. c. 69. Three days' notice to be given of vestries;

By stat. 58 *Geo.* 3. *c.* 69. intituled, "*An act for the regulation of parish vestries;*" it is enacted, § 1. that "no vestry or meeting of the inhabitants in vestry of or for any parish shall be holden until public notice shall have been given of such vestry, and of the place and hour of holding the same, and the special purpose thereof, three days at the least before the day to be appointed for holding such vestry, by the publication of such notice in the parish church or chapel on some *Sunday* during or immediately after divine service, and by affixing the same, fairly written or printed, on the principal door of such church or chapel."

by publication in the church, and affixed on the church door.

Chairman of vestries appointed.

§ 2. And for the more orderly conduct of vestries, in case the rector or vicar, or perpetual curate shall not be present, the

persons so assembled in pursuance of such notice shall forthwith nominate and appoint by plurality of votes, to be ascertained as herein-after is directed, one of the inhabitants of such parish to be the chairman of and preside in every such vestry; and in all cases of equality of votes upon any question arising therein, the chairman shall (in addition to such vote or votes as he may by virtue of this act be entitled to give in right of his assessment) have the casting vote; and minutes of the proceedings and resolutions of every vestry shall be fairly and distinctly entered in a book (to be provided for that purpose by the churchwardens and overseers of the poor), and shall be signed by the chairman, and by such other of the inhabitants present as shall think proper to sign the same.

58 G. 3. c. 69.

Chairman to have the casting

Minutes to be entered and signed.

§ 3. In all such vestries every inhabitant present, who shall, by the last rate which shall have been made for the relief of the poor, have been assessed and charged upon or in respect of any annual rent, profit, or value not amounting to 50*l.*, shall have and be entitled to give one vote and no more; and every inhabitant there present, who shall in such last rate have been assessed or charged upon or in respect of any annual rent or rents, profit or value, amounting to 50*l.* or upwards (whether in one or more than one sum or charge), shall have and be entitled to give one vote for every 25*l.* of annual rent, profit, and value upon or in respect of which he shall have been assessed or charged in such last rate, so nevertheless that no inhabitant shall be entitled to give more than six votes; and in cases where two or more of the inhabitants present shall be jointly rated, each of them shall be entitled to vote according to the proportion and amount which shall be borne by him of the joint charge; and where only one of the persons jointly rated shall attend, he shall be entitled to vote according to and in respect of the whole of the joint charge.

Manner of voting in ves-

Nightingale v. *Marshall and Another*, *M.* 4 *G.* 4. 2 *B.* & *C.* 313. Case for a false return to a writ of mandamus. The declaration stated, that on the 22d *November*, 1821, the office of sexton of the parish of *Saint Mary*, *Whitechapel*, became vacant; that the plaintiff was nominated and elected to the said office by a majority of the persons entitled to vote; that the defendants being churchwardens of the said parish, ought to have admitted the plaintiff to the said office, but they refused so to do; and in return to a writ of mandamus, issued on the 11th *February*, 1822, commanding them to admit the plaintiff to the said office, they falsely returned that the said plaintiff was not duly nominated and elected to the said office. At the trial before *Abbott* C. J., at the sittings in *Middlesex* after last *Trinity* term, a verdict was found for the plaintiff with nominal damages, subject to the opinion of the court upon the following case. The office of sexton for the parish of *Saint Mary*, *Whitechapel*, in the county of *Middlesex*, is an ancient office, and the right of election is in the inhabitants of the said parish, paying church and poor's rates, in vestry assembled. In *November*, 1821, the office became vacant, and on the 22d *November* a public meeting was duly holden for the election of a sexton. There were two candidates, the plaintiff and one *J. W.* While the election was proceeding, several inhabitants of the parish entitled to vote, claimed a right to give more than one vote under the 58 *Geo.* 3. c. 69. *s.* 3., by which it was en-

In the parish of *W.*, the poor-rates, according to an ancient custom, had always been made without respect to the value of property in the parish, but according to the supposed ability of the party charged; Held, that persons so rated, were not rated in respect of any annual rent, profit, or value, within the meaning of the 58 G. 3. c. 69. s. 3., and therefore were not entitled to more than one vote at vestry

Nightingale v. Marshall.

meetings, although rated upon more than 50*l*.

acted, "That in all such vestries every inhabitant present, who shall by the last rate, which shall have been made for the relief of the poor, have been assessed and charged upon, or in respect of, any annual rent, profit, or value, not amounting to 50*l*., shall have and be entitled to give one vote and no more; and every inhabitant present, who shall in such last rate, have been assessed or charged upon, or in respect of, any annual rent, profit, or value, not amounting to 50*l*., shall have and be entitled to give one vote and no more; and every inhabitant there present, who shall in such last rate have been assessed or charged upon, or in respect of, any annual rent or rents, profit or value, amounting to 50*l*. or upwards, whether in one, or in more than one sum or charge, shall have and be entitled to give one vote for every 25*l*. of annual rent, profit, and value upon or in respect of which he shall have been assessed or charged in such last rate; so, nevertheless, that no inhabitant shall be entitled to give more than six votes." At the close of the election the numbers were, for *J. W.* 639, and for the plaintiff, 631; but if a plurality of votes was admissible in the parish of *Whitechapel*, with respect to the election of a sexton, pursuant to the 58 *Geo*. 3. *c*. 69. *s*. 3., such a number of votes was tendered as was sufficient to give the plaintiff a majority of votes. The defendants were churchwardens of the parish at the time of the election, and they admitted *J. W.* to the office; and in return to a mandamus, commanding them to admit the plaintiff, they returned that the plaintiff was not duly nominated and elected; and the only question in the case is, whether under the circumstances hereinafter stated, a plurality of votes was admissible at the said election, pursuant to the statute 58 *Geo*. 3., *c*. 69. *s*. 3., so as to entitle the inhabitants, paying rates as aforesaid, at the election of a sexton to give more than one vote. In point of fact, the poor-rates are not assessed, and never have been assessed, upon all the inhabitants uniformly, according to an equal pound rate; but the rate purports to be made, and, according to an ancient custom in the parish always has been made, by the discretion of the vestry without respect to value, but according to the ability of the party charged, such ability being estimated with reference to property, whether in the parish or out of it. In some instances the property is stated in respect of which the party is charged; but in a great majority of cases the property is not stated, and where it is stated, the rate is not in proportion to the rent of the property; for example.

Rent.		Poor's Rate.	Church rate according to an equal pound rate.
£.		£. s.	
40	*L. Turner* for two cooperages - - -	5 11	
40	*Alex. Mann* for house - - - - - - -	10 15	
50	*Mr. Lucas* for house - - - - - - -	9 10	

The case having been argued.—*Abbott* C. J. I give no opinion as to the validity of the rates in question. My opinion is founded entirely on the third section of the 58 *Geo*. 3. *c*. 69.,

which provides for a plurality of votes. By that section it was enacted, "that every inhabitant who shall by the last rate which shall have been made for the relief of the poor, have been assessed and charged upon or in respect of any annual rent, profit, or value, not amounting to 50*l*., shall have and be entitled to give one vote and no more; and if upon an annual rent, profit, or value, amounting to more than 50*l*., he shall have one vote for every 25*l*., of annual rent, &c. upon which he is assessed." Looking at this rate, I am clearly of opinion, that no person in the parish of *St. Mary, Whitechapel*, is rated *upon or in respect of any annual rent, profit, or value.* If the rate were so made, it must be proportioned to the amount of the rent, profit, or value, in respect of which it is imposed. It is not so proportioned; and it therefore appears not to have been imposed in respect of the property mentioned in the act, but in respect of some ability to contribute to the relief of the poor, measured by some other standard. I am therefore of opinion, that the provisions of stat. 58 *Geo*. 3. *c*. 69. respecting a plurality of votes, do not apply to the parish in question; the plaintiff, consequently, was not duly elected to the office of sexton, and a nonsuit must be entered.— *Bayley* J. I am of opinion that this parish is not within the operation of stat. 58 *Geo*. 3. *c*. 69. *s*. 3. The general rule is, that there shall be an equal pound-rate upon the property in the parish, therefore all persons having an estate equal in value contribute the same sum. The value of their property is the criterion of the rate. It was the intention of the legislature, by the statute referred to, to increase the power which each inhabitant would have at the vestry-meetings, in proportion to the burthen borne by him. This parish cannot have the benefit of that act, for the custom (which may be legal) to make the rate in a particular mode, prevents the property of any individual in the parish being a criterion of the burthen borne by him. We cannot then say that the rate is imposed in respect of any annual rent, profit, or value; and unless that be so, the provision for a plurality of votes does not apply.— *Holroyd* J. The rate stated in this case is not such as to bring the parish within the provisions of stat. 58 *Geo*. 3. *c*. 69. § 3. To be within that, the parties must be assessed upon some annual rent, profit, or value: the rate does not shew that they have been so assessed. Certain rents are stated, but the inequality of the rate shews that it is not imposed in respect of those rents; nor does it appear to have been imposed in respect of any profit or value, much less annual profit or value. It is left uncertain in respect of what it is assessed, and therefore is quite insufficient to make the 58 *Geo*. 3. *c*. 69. *s*. 3. applicable to their vestry-meetings.— *Best* J. If the inhabitants of *Saint Mary, Whitechapel*, are anxious to avail themselves of the provisions in the vestry act, they must alter their mode of rating. By that act it is not sufficient that the parties should be rated at 50*l*. or upwards; to have more than one vote, they must be rated in respect of annual rents, profit, or value. Now it is stated in the case that each inhabitant is rated according to the discretion of the vestry, and the rate itself shews that the amount of it is not regulated by the amount of the property in the parish. If so, it cannot be made according to the principle laid down in the act; and therefore no person can,

Nightingale v. Marshall.

58 G. 3. c. 69. by virtue of that act, be entitled to a plurality of votes. I therefore agree that a nonsuit must be entered. Judgment of nonsuit.

Inhabitants coming into a parish since the last rate may vote.

By stat. 58 *Geo.* 3. *c.* 69. § 4. When any person shall have become an inhabitant of any parish, or become liable to be rated therein, since the making of the last rate for the relief of the poor thereof, he shall be entitled to vote for and in respect of the lands, tenements, and property for which he shall have become liable to be rated, and shall consent to be rated, in like manner as if he should have been actually rated for the same.

Inhabitants refusing payment of rates to be excluded from vestries.

† *Sic.*

§ 5. Provided, that no person who shall have refused or neglected to pay any rate for the relief of the poor, which shall be due from and shall be demanded of him, †and shall be entitled to vote or to be present in any vestry of the parish for which such rate shall have been made, until he shall have paid the same. See 59 *Geo.* 3. *c.* 85. § 3. *post.* p. 221.

For preservation of parish books and papers.

§ 6. Enacts, that as well the books hereby directed to be provided and kept for the entry of the proceedings of vestries, as all former vestry-books, and all rates and assessments, accounts and vouchers of the churchwardens, overseers of the poor, and surveyors of the highways, and other parish officers, and all certificates, orders of courts and of justices, and other parish books, documents, writings, and public papers of every parish, except the registry of marriages, baptisms, and burials, shall be kept by such person and persons, and deposited in such place and manner, as the inhabitants in vestry assembled shall direct; and if any person in whose hands or custody any such book, rate, assessment, account, voucher, certificate, order, document, writing, or paper shall be, shall wilfully or negligently destroy, obliterate, or injure the same, or suffer the same to be destroyed, obliterated, or injured, or shall, after reasonable notice and demand, refuse or neglect to deliver the same to such person or persons, or to deposit the same in such place as shall by the order of any such vestry be directed, every person so offending, and being lawfully convicted thereof on confession, or the oath of one witness, by and before two justices of the peace, upon complaint to them made, shall for every such offence forfeit such sum, not exceeding 50*l.* nor less than 40*s.*, as shall by such justices be adjudged; and the same shall be recovered and levied by warrant of such justices in such manner and by such ways and means as poor's rates in arrear are by law to be recovered and levied, and shall be paid to the overseers of the poor of the parish against which the offence shall be committed, or to some of them, and be applied for and towards the relief of the poor thereof: Provided nevertheless, that every person who shall unlawfully retain in his custody, or shall refuse to deliver to any person or persons authorised to receive the same, or who shall obliterate, destroy, or injure, or suffer to be obliterated, destroyed, or injured, any book, rate, assessment, account, voucher, certificate, order, document, writing, or papaper, belonging to any parish, or to the churchwardens, overseers of the poor, or surveyors of the highways thereof, may in every such case be proceeded against in any of H. M.'s courts, civilly or criminally, in like manner as if this act had not been made.

Penalty on retaining or injuring parish books, &c.

Recovery and application of penalty.

Not to affect other proceedings.

Provisions in relation to

§ 7. Provides, that all provisions, authorities, and directions in this act contained in relation to parishes, shall extend and be con-

strued to extend to all townships, vills, and places having separate overseers of the poor, and maintaining their poor separately: and that all the directions and regulations herein contained in regard to vestries shall extend and be applied to all meetings which may by law be holden of the inhabitants of any parish, township, vill, or place, for any of the purposes in this act expressed; and that the notices by this act required to be given of every vestry may, in places in which there is or shall be no parish church or chapel, or where there shall not be divine service in such church or chapel, be given and published in such manner as notices of the like nature shall have been there usually given and published, or as shall be most effectual for communicating the same to the inhabitants of every such parish, township, vill, or place respectively.

58 G. 3. c. 69. — parishes extended to townships, &c.

Manner of giving notices of vestries and meetings in special cases.

§ 8. Nothing in this act contained shall extend or be construed to extend to alter the time of holding any vestry, parish, or town meeting which is by the authority of any act required to be holden on any certain day, or within any certain time in such act prescribed and directed; nor shall any thing in this act contained extend to take away, lessen, prejudice, or affect the powers of any vestry or meeting holden in any parish, township, or place, by virtue of any special act or acts, of any ancient and special usage or custom, or to change or affect the right or manner of voting in any vestry or meeting so holden.

Not to alter the time for holding vestries specially directed; nor to affect special vestries.

§ 9. Nothing in this act contained shall extend to any parishes within the city of *London*, nor by § 10. in the borough of *Southwark*.

Extent of act.

§ 11. This act shall extend only to *England* and *Wales*.

May v. *Gwynne*, *H.* 1 & 2 *G.* 4. 4 *B.* & *A.* 301. A rule had been obtained, calling on the plaintiff in this case, to produce and permit the defendant to inspect and take copies of certain papers, belonging to the parish of *Hammersmith*, which were in his possession. It appeared that the defendant had, by the authority of the vestry, made a report in writing respecting the conduct of the plaintiff, founded, as it was stated, on the inspection of certain documents then in the parish chest, but now in the possession of the plaintiff. This report having been published, an action was brought by the plaintiff for a libel, which the defendant wished to justify, and these documents were necessary for that purpose; and the defendant contended, that he, being an inhabitant of the parish, was entitled to see and take copies of them. It was doubtful, in the affidavits, whether the plaintiff or another person, was legally the vestry clerk of the parish. — After argument, *Abbott* C. J. said, This is a motion of the first impression; and I am of opinion that the Court ought not to order a plaintiff to furnish evidence against himself. If the plaintiff be legally the vestry clerk, then he has a right to the custody of these documents; and if he be not, then the person really entitled to the office may by *mandamus* obtain possession of them. But the defendant has no such right; and I think that we ought not, in this case, which is for a libel, to grant the defendant's application. If the papers had been wanted for the purpose of advancing any parochial right, the case would have been different. R. D. with costs.

The court will not compel the vestry clerk of a parish to produce and permit copies to be taken of documents from the parish chest in his custody, for any other than parochial purposes.

Stat. 59 *Geo.* 3. *c.* 85. after reciting stat. 58 *Geo* 3. *c.* 69. Enacts,

59 G. 3. c. 85. Persons rated to

59 G. 3. c. 85.

the poor though not parishioners, may vote in vestry according to the value of the premises rated.

§ 1. "that any person who shall be assessed and rated for the relief of the poor in respect of any annual rent, profit, or value arising from any lands, tenements, or hereditaments situate in any parish, in which any vestry shall be holden under the said recited act, although such person shall not reside in or be an inhabitant of such parish, shall and may lawfully be present at such vestry, and such person shall have and be entitled to give such and so many vote or votes at such vestry, in respect of the amount of such rent, profit or value, as by the said act, any inhabitant of such parish present at such vestry might or ought to have and be entitled to give in respect of such amount, and to all intents and purposes, as if such person were an inhabitant of such parish; any thing in the said recited act (*a*) to the contrary in anywise nothwithstanding."

Clerk or agent of corporations, &c. may vote in vestry according to the value of the premises rated.

§ 2. Enacts, that in all cases where any corporation, or body politic or corporate, or company shall be charged to the rate for the relief of the poor of such parish, either in the name of such corporation or of any officer of the said corporation, it shall and may be lawful for the clerk, secretary, steward, or other agent duly authorised for that purpose of such corporation, or body politic or corporate, or company, to be present at any vestry to be holden in the said parish under the said recited act; and such clerk, secretary, steward, or agent, shall be entitled to give such and so many vote or votes at such vestry, in respect of the amount of the rent, profit, or value of such lands, tenements, or hereditaments, as by the said act any inhabitant assessed to such rate present at such vestry might or ought to have and be entitled to in respect of such amount.

Non-payment of rates to disqualify from being present at or voting in vestry.

§ 3. And whereas by the said act it was intended to be enacted that no person should be present at or vote at any vestry who should have refused to pay any assessment that had become due, and had been demanded of such person, but the word 'and' was by mistake so inserted in the said act, as to make the same in that respect ambiguous; now, to rectify such mistake, "it is enacted, that no person who shall have refused or neglected to pay any rate for the relief of the poor which shall be due from and shall have been demanded of him, shall be entitled to vote or to be present in any vestry of the parish for which such rate shall have been made, until he shall have paid the same; nor shall any such clerk, secretary, steward, or agent, be entitled to be present or to vote, nor shall be present or vote, at any vestry in such parish, unless all rates for the relief of the poor, which shall have been assessed and charged upon or in respect of the annual rent, profit, or value, in right of which any such clerk, secretary, steward, or agent shall claim to be present and vote, which shall be due, and which shall have been demanded at any time before the meeting of such vestry, shall have been paid and satisfied."

Wilson, D.D. v. *M'Math*, 3 *B. & A.* 241. The ecclesiastical court has jurisdiction, *ratione loci*, over the order and proceedings of vestry meetings, held in a church, and therefore, where

(*a*) And by stat. 59 *Geo.* 3. *c.* 12. § 22. Any person, rated as the *owner* of certain houses, apartments &c. shall be entitled to be present at and vote in vestry, as an *inhabitant*. *Vide ante*, p. 50.

a rector had libelled, in that court, a parishioner, for preventing him from presiding as chairman at such a meeting, a prohibition was refused.

Wilson v. M'Math.

(6.). Of Select Vestries under stat. 59 Geo. 3. c. 12.

59 G. 3. c. 12.

Parishes empowered to establish select vestries for the concerns of the poor.

Stat. 59 *Geo.* 3. *c.* 12. § 1. Enacts, "that it shall be lawful for the inhabitants of any parish, in vestry assembled, and they are hereby empowered, to establish a select vestry for the concerns of the poor of such parish; and to that end to nominate and elect, in the same or in any subsequent vestry, or any adjournment thereof respectively, such and so many substantial householders or occupiers within such parish, not exceeding the number of twenty nor less than five, as shall in any such vestry be thought fit to be members of the select vestry; and the rector, vicar, or other minister of the parish, and in his absence the curate thereof (such curate being resident in and charged to the poor's rates of such parish), and the churchwardens and overseers of the poor for the time being, together with the inhabitants who shall be nominated and elected as aforesaid (such inhabitants being first appointed thereto by writing under the hand and seal of one of H. M.'s justices of the peace, which appointment he is hereby authorised and required to make), shall be and constitute a select vestry for the care and management of the concerns of the poor of such parish; and any three of them (two of whom shall neither be churchwardens nor overseers of the poor) shall be a quorum; and when any inhabitant elected and appointed to serve in any such select vestry shall, before the expiration of his office, die or remove from the parish, or shall become incapable of serving, or shall refuse or neglect to serve therein, the vacancy which shall be thereby occasioned shall, as soon as conveniently may be, be filled up by the election and appointment, in manner aforesaid, of some other substantial householder or occupier of such parish, and so from time to time as often as any such vacancy shall occur; and every such select vestry shall continue and be empowered to act from the time of the appointment thereof until fourteen days after the next annual appointment of overseers of the poor of the parish shall take place, and may be from year to year, and in any future year, renewed in the manner herein-before directed; and every such select vestry shall meet once in every fourteen days, and oftener if it shall be found necessary, in the parish church, or in some other convenient place within the parish; and at every such meeting a chairman shall be appointed by the majority of the members present, who shall preside therein; and in all cases of equality of votes upon any question there arising, the chairman shall have the casting vote; and every such select vestry is hereby empowered and required to examine into the state and condition of the poor of the parish, and to enquire into and determine upon the proper objects of relief, and the nature and amount of the relief to be given; and in each case shall take into consideration the character and conduct of the poor person to be relieved, and shall be at liberty to distinguish, in the relief to be granted, between the deserving, and the idle, extravagant, or profligate poor; and such select vestry shall make orders in writing

Constitution of select vestries.

Members elected to be appointed by a justice.

Vacancies to be supplied.

Continuance of select vestries.

Power of renewal.

Meetings and duties of select vestries.

59 G. 3. c. 12. for such relief as they shall think requisite, and shall enquire into and superintend the collection and administration of all money to be raised by the poor's rates, and of all other funds and money raised or applied by the parish to the relief of the poor; and where any such select vestry shall be established, the overseers of the poor are required, in the execution of their office, to conform to the directions of the select vestry, and shall not (except in cases of sudden emergency or urgent necessity, and to the extent only of such temporary relief as each case shall require, and except by order of justices, in the cases hereinafter provided for,) give any further or other relief or allowance to the poor, than such as shall be ordered by the select vestry.

Overseers (except in cases of emergency) to give no other relief than such as shall be ordered by the select vestry.

A select vestry for the management of the parish affairs existing by ancient custom, cannot elect another select vestry for the management of the poor within the 59 G. 3. c. 12.

Rex v. *Woodman and others, E.* 2 *Geo.* 4. 4 *B.* & *A.* 507. The parish of *Morpeth*, in *Northumberland*, consists of several separate and distinct townships, each of which has its own overseers, and maintains its own poor. One of them is the town of *Morpeth*. Beyond the period of living memory, the church and parish affairs of the parish of *Morpeth* have been managed by a select vestry, consisting of twenty-four persons, of whom sixteen have been taken from inhabitants of the town of *Morpeth*, and the remaining eight from the farmers in the country parts of the parish. The inhabitants constituting the select vestry have generally continued in office for life, unless they happened to leave the parish or declined to serve. In case of vacancy, the place of a town's member has been usually filled up by the remaining fifteen belonging to the town, and the place of a country member by the remaining seven belonging to the country part of the parish; or as many of each set as may happen to be present on such occasions. None of the inhabitants, besides the twenty-four, and the rector or curate, ever attended these vestry meetings. On the 19th of *March*, 1820, a notice signed by the churchwardens and overseers of the township of *Morpeth* was duly given, stating, that a meeting of the twenty-four gentlemen acting for the township of *Morpeth* would be held on the 4th *April*, for the establishing of a select vestry for the concerns of the poor of the township of *Morpeth*, and on the 4th *April* a meeting was accordingly held by twelve of the sixteen persons acting for the township of *Morpeth;* at which meeting the defendant and nineteen other substantial householders or occupiers within the township were nominated and elected to be members of such select vestry, and an order of a magistrate was subsequently made, by which such twenty persons were appointed to act as a select vestry, for the care and management of the poor of the township of *Morpeth*. The order having been removed into the court of K. B. a rule was obtained for quashing it, on the ground, that the persons appointed to constitute this select vestry were not chosen according to the provisions of the statute 59 *Geo.* 3. *c.* 12. at any general meeting in vestry of the inhabitants of the township, but at a meeting of a select body only. These several facts having been disclosed upon affidavits; after argument *Abbott* C. J. said, I am clearly of opinion, that the sixteen persons who constituted the ancient select vestry for the township of *Morpeth* cannot be considered the inhabitants of the parish in vestry assembled within the meaning of the 59 *Geo.* 3. *c.* 12. The power to appoint a select vestry is expressly given to the *inhabitants* in vestry assembled; and here it was exercised,

not by the inhabitants in vestry assembled, but by certain persons possessing some of the powers of the inhabitants in vestry assembled. It is not necessary in this case to decide what the inhabitants may do, but I have no difficulty in saying that, in my opinion, the inhabitants at large may assemble and appoint a select vestry for the care and management of the poor, not interfering with any of the rights of the ancient select vestry. The rule for quashing the order must therefore be made absolute. — R. A. 59 G. 3. c. 12.

Stat. 59 *Geo.* 3. *c.* 12. § 2. Enacts, that when any complaint shall be made to any justice of the peace, of the want of adequate relief, by or on the behalf of any poor inhabitant of any parish for which a select vestry shall be established by virtue of this act, such justice shall not proceed therein, or take cognisance thereof, unless it shall be proved on oath before him, that application for such relief hath been first made to and refused by the select vestry, and in such case, the justice to whom the complaint shall be made may summon the overseers of the poor, or any of them, to appear before any two of his majesty's justices of the peace, to answer the complaint; and if upon the hearing thereof it shall be proved on oath, to the satisfaction of the justices who shall hear the same, that the party complaining, or on whose behalf the complaint shall be made, is in need of relief, and that adequate relief hath been refused by the select vestry, or that such select vestry shall not have assembled as by this act directed, it shall be lawful for such justices to make an order, under their hands and seals, for such relief as they, in their just and proper discretion, shall think necessary (reference being also had by such justices to the character and conduct of the applicant); provided, that in every such order the special cause of granting the relief thereby directed shall be expressly stated, and that no such order shall be given for or extend to any longer time than one month from the date thereof: provided that it shall be lawful for any justice to make an order for relief in any case of urgent necessity, to be specified in such order, so as such order shall remain in force only until the assembling of the select vestry of the parish, as aforesaid, to which such case shall relate.

Justices empowered to order relief in certain cases for a limited time.

One justice may order temporary relief, in cases of urgent necessity.

§ 3. Every select vestry, to be established by the authority of this act, shall cause minutes to be fairly entered in books, to be for that purpose provided, of all their meetings, proceedings, resolutions, orders and transactions, and of all sums received, applied, and expended by their direction; and such minutes shall from time to time be signed by the chairman; and shall, together with a summary or report of the accounts and transactions of the select vestry, be laid before the inhabitants of the parish in general vestry assembled, twice in every year, that is to say, in the month of *March* and the month of *October*, and at such other times as the select vestry shall think fit; and the minutes, proceedings, accounts, and reports of every select vestry, shall belong to the parish, and be preserved with the other books, documents, accounts, and public papers thereof.

Minutes to be kept of the proceedings of select vestries.

Minutes of select vestries, and reports of their proceedings, to be laid before the inhabitants in general vestry.

§ 4. Provides, that the churchwardens and overseers of the poor shall cause ten days' notice, at the least, to be publicly given, in the usual manner, of every vestry to be holden for the purpose of establishing any select vestry, or of nominating and electing the members, or any member thereof, and of every

Notice to be given of vestries for the establishment and election of members, and

59 G. 3. c. 12.

vestry to be holden for the purpose of receiving the report of the select vestry; and every notice of any such vestry shall state the special purpose thereof.

for receiving reports of select vestries.

Justices to act within their respective jurisdictions.

§ 35. All powers and authorities, by this act given to and vested in justices of the peace, shall be exercised and executed by such justices within the limits of their respective commissions and jurisdictions, and not elsewhere; and all provisions, clauses, authorities, and directions in this act contained in relation to parishes, shall extend and be construed to extend to all townships, vills, and places having separate overseers of the poor, and maintaining their poor separately; and all acts and duties required or authorised by this act to be done and executed by churchwardens and overseers of the poor, may in every parish be performed, exercised, and executed by the major part of the churchwardens and overseers of the poor thereof; and in townships, vills, and places which have no churchwarden, the same may be performed, exercised, and executed by the overseers of the poor thereof, or the major part of them; and all the powers, provisions, and clauses in this act contained, which relate to vestries, or to the inhabitants of any parish in vestry assembled, shall be construed to extend to all meetings of the inhabitants of any township, vill, or place, having separate overseers of the poor, and maintaining its poor separately, to be held after due and legal notice for carrying into execution the laws for the relief of the poor, as fully as if in every such provision and clause they were severally and respectively named and repeated.

Provisions relating to parishes applied to townships, &c.

Majority to act.

Powers given to vestries applied to meetings of townships, &c.

Saving powers of 22 G. 3. c. 83. where the provisions are adopted.

§ 36. Provides, that nothing in this act contained shall extend to take away, abridge, alter, prejudice, or affect, further than is hereby expressly enacted, any of the powers, directions, or regulations, contained in the act of 22 *Geo.* 3. *c.* 83. for the better relief and employment of the poor, in or with respect to such parishes, townships, and places as have adopted, or as shall adopt and become subject to the provisions of that act; nor to take away, abridge, alter, prejudice, or affect any of the powers or provisions of any special or local act or acts, for the maintenance, relief, or regulation of the poor, in any city, town, hundred, district, parish, or place, so nevertheless that in every city, town, hundred, district, parish, or place, such of the clauses, directions, and powers in this act contained, as are not repugnant to, nor incompatible with, the provisions of the said act of the 22 *Geo.* 3. or of such respective special or local acts, shall have the like force and effect, and may be adopted and applied in like manner, as in other parishes and places: provided also, that nothing in this act contained shall extend to alter, affect, or disturb any select vestry which in any parish has been established and acted upon by virtue of any ancient usage or custom.

Saving powers given by special acts.

Select vestries.

Act extends to England only.

§ 37. This act shall extend only to that part of the U. K. called *England.*

Form of Appointment of a Select Vestry.

County of ——— } *WHEREAS in and by the statute made and passed in the fifty-ninth year of the reign of his late majesty king* George *the third, intituled* "An act to amend the laws for the relief of the poor," *the inhabitants of any parish, in*

59 G. 3. c. 12.

vestry assembled, are empowered to establish a Select Vestry for the concerns of the poor of such parish, and to that end to nominate and elect in the same or in any subsequent vestry, or any adjournment thereof respectively, such and so many substantial householders or occupiers within such parish, not exceeding the number of twenty, nor less than five, as shall in any such vestry be thought fit to be members of the select vestry. And the rector, vicar, or the minister of the parish, and in his absence the curate thereof [such Curate being resident in and charged to the poors' rates of such parish] *and the churchwardens and overseers of the poor for the time being, together with the inhabitants, who shall be nominated and elected as aforesaid* [such inhabitants being first thereto appointed by writing under the hand and seal of one of H. M.'s justices of the peace, which appointment he is hereby authorised and required to make,] *shall be and constitute a select vestry for the care and management of the concerns of the poor of such parish, and every such select vestry shall continue and be empowered to act from the time of the appointment thereof until fourteen days after the next annual appointment of overseers of the poor of the parish shall take place. And whereas it hath been this day duly made to appear unto me, being one of H. M.'s justices of the peace in and for the said county of ———, that the inhabitants of the parish of ———, in the said county, in vestry assembled, on the ——— day of ——— instant, have, in pursuance of the powers contained in the said statute, established a Select Vestry for the care and management of the concerns of the poor of the said parish, and to that end have in the same vestry nominated and elected ——— substantial householders and occupiers within the said parish, whose names are hereinafter-mentioned to be members of such select vestry. I therefore, by virtue and in pursuance of the authority given to me by the statute aforesaid, do hereby appoint the same substantial householders and occupiers, that is to say,* A. B., C. D., &c. [not exceeding twenty nor less than five,] *to be members of the said select vestry so established as aforesaid for the care and management of the concerns of the poor of the said parish of ———, in the said county. Given under my hand and seal at ———, in the said county, the ——— day of ———, one thousand eight hundred and ———.*

Although the acts alluded to in the following section are of too great a length to be fully set forth, yet it is thought expedient to give a concise and faithful abstract of them: **Maintenance of poor by incorporated societies.**

7. Some Account of Statutes 22 G. 3. c. 83., 33 G. 3. c. 35., 41 G. 3. (*G. B.*) c. 9., 42 G. 3. c. 74., 43 G. 3. c. 110., 36 G. 3. c. 10., 49 G. 3. c. 124. 52 G. 3. c. 73. and 50 G. 3. c. 50. for the Maintenance of the Poor by incorporated Societies.

See stats. 45 *Geo.* 3. *c.* 54., 55 *Geo.* 3. *c.* 137. (p. 32.), 56 *Geo.* 3. *c.* 129., 59 *Geo.* 3. *c.* 12. § 10. 12. *ante.*

By stat. 22 *Geo.* 3. *c.* 83. § 1. So much of stat. 9 *Geo.* 1. *c.* 7. as respects the maintaining or hiring out the labour of the poor by contract, within any parish, &c. which adopts the provisions of 22 G. 3. c. 83.

22 G. 3. c. 83 this act, is repealed; and every contract or agreement, made in pursuance thereof, for either of those purposes, shall be null and void.

Restrictions of the said act. And by § 44. nothing in this act shall extend to any parish, township, or place, which shall not agree to adopt the provisions herein contained.

Nomination of a guardian and governor. § 3. In order to which agreement, whenever two-third parts in number and value of the owners or occupiers, according to their poor rate, within any parish, township, or place, qualified as hereafter mentioned, shall, at a public meeting to be holden pursuant to this act, signify their approbation of the provisions herein contained, and their desire to adopt them, and shall at such meeting, nominate to the justices three persons qualified for guardians (*a*), and three others for governors of the poor-house, and fix salaries to be paid to such guardian and governor respectively, and shall procure the consent of two justices within that limit to such agreement and salaries, by writing under their hands; they shall from that time be entitled to the benefits of this act.

33 G. 3. c. 35. And by stat. 33 *Geo.* 3. *c.* 35. § 1. Whenever two-third parts in number and value as required by the said act of such qualified persons only as have actually attended or may hereafter actually attend at such public meeting held in pursuance of the directions of the said act, have there signified, or may hereafter there signify, their approbation of the provisions in the said act contained, and their desire to adopt them, such approbation and desire so signified, or to be hereafter so signified as aforesaid, have been and shall be a sufficient compliance with the said act.

Where two guardians may be named and appointed; § 2. And whenever two-third parts in number and value of persons so qualified, and actually attending at such public meeting, shall nominate and recommend to the consideration of the justices of the county, &c. where such meeting shall be holden, three able and discreet persons qualified for guardians of the poor for such parish, township, or place, and shall fix the salary to be paid to such guardian according to the said act, and shall also at the said public meeting, by writing under their hands, signify their opinion to the said justices, that on account of the extent and population of such parish, &c. more than one guardian of the poor is necessary, and shall express their desire, that two of the three persons so nominated and recommended, may be appointed guardians of the poor for such parish, &c. such justices as are already empowered by the said act to appoint one guardian for such parish, &c. may appoint two guardians accordingly.

41 G. 3. (G. B.) c. 9. And by stat. 41 *Geo.* 3. (*G. B.*) *c.* 9. § 1. If it shall be the opinion of such two-thirds at a public meeting called for that purpose, pursuant to notice, given in the parish church on the *Sunday* preceding, that one guardian is insufficient for the purposes of 22 *Geo.* 3. *c.* 83., and the same be certified by two or more present at such meeting, in writing under their hands, to two justices of the district where the parish is situate, together with the names
or more. of four or more fit persons for the office of guardian, the said justices may by writing under their hands, according to the sche-

(*a*) For the power of a guardian *de facto*, see *Rex* v. *Martyr and Fulham*, tit. Bastardy, Vol. I. p. 320.

dule of said act, appoint such and so many of the said persons to be guardians as they shall think fit.

And by stat. 22 *Geo.* 3. *c.* 83. § 4. Where two such third parts of owners and occupiers so qualified as aforesaid, shall think fit with such approbation as aforesaid, signified as aforesaid, and subscribed at the foot of the said agreement (No. II.) (*a*) to unite for the purposes of this act, and thall signify their desire at a public meeting in each parish, holden as aforesaid, (No. III.) an agreement shall be entered into by the guardians of the poor of each parish, (No. IV.) specifying as therein mentioned, to be entered with the clerk of the peace, and a copy (No. V.) left with him within three calendar months from the date of the agreement, and from that time the parishes shall have the benefit of the act. **22 G. 3. c. 83.**

§ 5. Provided that no parish, township, or place, distant more than ten miles from such poorhouse, shall be permitted to unite with the parishes or places which shall establish such poorhouse. **Two or more parishes may unite.**

And by stat. 33 *Geo.* 3. *c.* 35. § 3. All casual poor within and entitled to relief from any one of such parishes, townships, or places as have been, or may hereafter be united together for the purposes of the 22 *Geo.* 3. *c.* 83. shall be relieved by all the said parishes, &c. conjointly, and in the same respective proportion as they are directed to contribute for the general purposes of the said act, according to its provisions and regulations. **33 G. 3. c. 35. Casual poor therein, to be relieved at their joint expences.**

By stat. 22 *Geo.* 3. *c.* 83. § 6. The notice for every public meeting under this act, shall be given in the church three successive *Sundays* before, and fixed in writing on the church door 15 days before (No. VI.); and none shall vote at such meeting, unless he be owner or occupier of lands assessed to the poor rate after the rate of 5*l. per annum* at the least; nor shall any person vote as occupier unless he shall be assessed to such poor rate; but where there are not 10 persons qualified as aforesaid, then every person assessed or paying poors' rates, may vote. **22 G. 3. c. 83. Meetings to be held.**

§ 7, 8. And where guardians are appointed, neither churchwarden nor overseer shall intermeddle in the care and management of the poor; but the guardian shall be invested with all powers given by any act of parliament to the overseers of the poor, and in all respects, except in regard to making and collecting the rates, shall be an overseer; but the churchwardens and overseers shall continue to have the powers of making and collecting the poor rate as at present, and shall pay the same to the guardian from time to time as may be necessary for discharging the expences of the house and poor; or if two parishes or places be united, they shall pay over their quotas respectively to the treasurer of such united district; or shall permit the treasurer to draw drafts upon him, (No. VIII.) and specify in the receipt and draft the general purposes for which such money is to be applied: to be allowed to the churchwarden and overseer in his accounts; and the accounts, both of them and the guardian, shall be examined monthly by the visitor, after they shall have been verified on oath before a justice. **Power of the guardians.** **Accounts to be examined.**

And by stat. 41 *Geo.* 3. (*G. B.*) *c.* 9. § 2. The guardians present **41 G. 3. (G. B.) c. 9.**

(*a*) For these Forms reference must be had to the act itself.

41 G. 3. (G. B.) c. 9. at a monthly meeting, with the approbation of the visitor, who shall sign the same, may make an order on the churchwardens or overseers, or collector of the poors' rate, some or one of them for so much money as shall be necessary for the purposes of the act; and upon neglect or refusal to pay the same, any justice of the division, on proof on oath of such default, may issue his warrant for levying by distress and sale on the goods and chattels of the said churchwardens, &c. according to said act, as in case of nonpayment by the guardians.

22 G. 3. c. 83. And by stat. 22 *Geo.* 3. *c.* 83. § 7. All notices or applications directed by any act of parliament to be given or made to the overseers, with respect to the management or removal of the poor, shall be given and made to the guardian where any shall be appointed; but if any orders of removal or notices shall happen be given to the churchwarden or overseer, the same shall be valid, and the churchwarden or overseer shall deliver the same to the guardian, or forfeit 40*s*. for his neglect.

Settlements. § 39. Provided that nothing herein shall extend to alter or affect the settlement of any person; or to give to any illegitimate child born in a poorhouse or workhouse established under this act, a settlement in the parish or place where such house shall be (but such child shall be considered as settled in the parish or place to which the mother belongs); or to alter the regulations established by any act of parliament for any particular house of industry or workhouse in any part of this kingdom.

Visitor appointed. § 10. The guardians for united parishes shall, as soon after the agreement as possible, meet to nominate three persons as fit for the office of visitor; and after apply to two justices, and produce to them the agreement and names of the said three persons. The justices shall within three days appoint one to be visitor, (No. VII.) If he refuse, then one other. If he refuse, then the third. If he decline, the guardians shall serve monthly by rotation, subject to the controul of the justices. The visitor, if he be not a guardian, may appoint a deputy (No. IX.) to act for him in his absence, and make report to him. The said visitor to superintend every such house, to settle accounts between guardian and treasurer, in case of dispute, to settle all doubts concerning the persons who are to be sent thither to enforce the rules and regulations for the better accommodation and relief of the poor, and to prevent unnecessary expence. And for an inducement for undertaking the office, the visitor or deputy shall be freed from the office of constable, and all parochial offices, and from serving upon juries at assizes or quarter sessions, whilst he continues in such office, and a certificate by a justice acting for the limit where he executes the office (No. X.) shall be evidence of his serving it.

Visitor to be free from certain offices.

§ 11. If two-thirds as aforesaid in number and value, in a single parish under this act, desire to have a visitor, they shall nominate, and the justices appoint as aforesaid.

Treasurer. § 12. And the guardians shall recommend to the justices, one of their own body for a treasurer, who shall appoint him accordingly, or any other guardian whom they think more fit (No. VII.); which treasurer shall give security for duly accounting, and shall keep accounts, pay bills, and lay his account before the guardians at every meeting, and shall once a-year, (14 days before *Michael-*

mas quarter sessions,) make out an account of the expences attending the poorhouse, and of the number of poor persons, distinguishing their age and sex, and how they have been employed, and how much money hath been earned by the labour of the poor in the year preceding, to be laid before the visitor, and signified under his hands, if he approves the same, and to be transmitted to the clerk of the peace or town clerk, and by him laid before the sessions; and such treasurer shall be allowed an annual sum not exceeding 10*l.* as the visitor, if not a guardian, shall appoint; and if no such visitor as two justices shall appoint. 22 G. 3. c. 83.

By stat. 41 *Geo.* 3. (*G.B.*) *c.* 9. § 3. Any two justices of the district where the parish is, to whom the expediency of the appointment shall be made appear, by application of two-thirds of owners in value, &c. qualified as aforesaid, may appoint a treasurer for the poorhouse of a single parish, with a salary not exceeding 10*l.*, according to the form in stat. 22 *Geo.* 3. for the united parishes. 41 G. 3. (G.B.) c. 9. Treasurer.

By stat. 22 *Geo.* 3. *c.* 83. § 9. The justices shall also appoint a governor of each poorhouse, upon application made by two of those who signed the agreement; who may, upon proof of misbehaviour or incapacity, be removed by the visitor with the consent of the guardians, or the major part of them; or if a guardian be visitor, by two justices within the limit. 22 G. 3. c. 83. Governor.

§ 14. The offices of guardian, governor, visitor, and treasurer, shall determine in *Easter* week next after the appointment, on the day on which the public meeting for the purposes of this act shall be held. Officers how long to continue.

§ 13. If any vacancy shall happen in any of the said offices, by death, resignation, or removal, meetings shall be called as soon as conveniently may be, and the vacancy filled up in the manner before mentioned. Vacancies.

§ 17. The guardians shall provide houses, with proper buildings and accommodations, either by erecting new ones on land to be purchased or rented by them, altering old ones, or hiring buildings for the purpose; and fit them up with the advice and approbation of the visitor, at the proportionable expence of the several places respectively, and provide utensils and materials for their employment. Houses to be provided.

§ 18. Provided that the poorhouse shall be situate within the respective parish or township, or if several be united, then within one of the parishes or townships so united; and not elsewhere, without the consent of three parts in four in number and value qualified as aforesaid, to be assembled as aforesaid. Houses where to be situated.

§ 43. And the guardians, with the approbation of the persons qualified as aforesaid, obtained at a public meeting for that purpose, may sell any house erected or purchased for the poor of such place, and apply the money for the purposes of this act; and also by order of a justice may remove the person or persons who shall inhabit the same, or any other house rented or provided at the expence of such parish or place, if they shall refuse to quit after fourteen days' notice. Poorhouses may be sold.

§ 19. The houses to be hired or rented, shall be taken for not more than twenty-one years, nor less than three (No. IV.); which shall be free from all parochial and parliamentary taxes, except such and to such amount as they were assessed at the time of taking thereof. On what condition to be rented.

22 G. 3. c. 83.

Purchasing lands. Visitor and guardian to be incorporated.

§ 21. The visitor and guardian shall be a body corporate, and enabled by that name to sue and be sued, to take by purchase or lease any lands not exceeding in any city or town one acre, and in the open country twenty acres, for the scite of a house and for lands to be occupied for the purposes of this act: also all voluntary grants and donations of land.

By § 22, 23. Certain bodies and persons in the act named shall have power to sell or lease not exceeding the quantities aforesaid.

Inclosing commons.

§ 27. The guardians may inclose from any waste or common, lying near or adjoining to the house, with consent of the lord of the manor, and the major part in value of the freeholders, or persons having right of common thereon, any quantity not exceeding ten acres, for building upon or improving the same for the benefit of such poor house.

Borrowing money.

§ 20. The visitor and guardian, where the expences of erecting the building, and purchasing the land, or their proportion thereof respectively shall amount to 100*l.* or upwards, may borrow the same at interest, and secure the same by a charge upon the poor rate, in sums not exceeding 50*l.* each, for the greater ease in discharging the same: and the guardians and their successors shall keep down the interest; and when the principal shall be called for, they may borrow it from some other person by assignment of the security, (No. XIV.)

1 & 2 G. 4. c. 56. reciting 22 G. 3. c. 83.

By stat. 1 & 2 G. 4. *c.* 56. § 1. after reciting that whereas an act was passed in the 22 *G.* 3. intituled *An act for the better relief and employment of the poor:* and whereas doubts have arisen whether the guardians, or visitor and guardians of the poor, acting under the authority of the said act, can make effectual sales of houses and other buildings, with the land, yards, and gardens belonging thereto or held with the same, and give effectual discharges for, and make due application of the purchase money, and also whether an omission to appoint guardians in any year invalidates the appointment of guardians in any subsequent year; it is enacted, "that it shall and may be lawful for the guardians, or the visitor and guardians for the time being, of the poor of any parish, township, or place, or of several united parishes, townships, or places, which hath or have adopted, or shall hereafter adopt the provisions of the said recited act, or the major part or number of such acting guardians, and jointly with the visitor, if any, for the time being (notwithstanding any omission to appoint guardians in each successive year, and also notwithstanding any informality in the appointment of any such acting visitor or guardians), and they are hereby authorised, under the order and direction of the inhabitants of any such parish, township, or place, or each of several such united parishes, townships, or places, in vestry assembled, and with the consent of two justices acting in and for the county, division, city, borough, or place, or several counties, divisions, cities, boroughs, or places, within which such parish, township, or place, or several parishes, townships, or places, shall be situate, to sell and dispose of any workhouse or other houses, tenements, and buildings, outhouses, offices, yards, gardens, orchards, lands, and grounds, with their appurtenances, which may have been purchased or erected by or on behalf of such parish, township, or place, or several united parishes, townships, or places, for the purposes and under the authority of the said act, and the fee simple and inherit-

Power given to guardians to sell poorhouses and lands.

ance thereof, or any other estate or interest therein; and by bargain and sale to convey and assure the same unto the purchaser or purchasers thereof respectively, and his, her, and their respective heirs, executors, administrators, and assigns, or as he or they shall direct, and to give and sign receipts for the purchase money, which receipts shall be effectual discharges to the purchaser or purchasers, and his, her, or their respective heirs, executors, administrators, and assigns, without any obligation on him, her, or them, to see to the application of his, her, or their purchase money; and from and after every such sale, the workhouse or other houses, tenements, and buildings, outhouses, offices, yards, gardens, orchards, lands, and grounds, with their appurtenances, so sold, shall be discharged from all the trusts and purposes of the said recited act." 1 & 2 G.4. c.56

Application of money to arise by such sale.

§ 2. Enacts, "that a competent part of the money arising from every such sale shall be applied in defraying the expences attending the sale, and in or towards discharging any incumbrances affecting the said workhouse, or other houses, tenements, and buildings, outhouses, offices, yards, gardens, orchards, lands, and grounds respectively, and any debts which may have been contracted by the guardians, or visitor and guardians of such parish, township, or place, or united parishes, townships, or places respectively, by way of charge on the poors' rates or otherwise; and the residue of any such money shall be paid by such guardians, or visitor and guardians, to the churchwardens and overseers for the time being of such parish, township, or place, or several united parishes, townships, or places respectively, in the like shares or proportions as they contributed towards the purchase or erection of the workhouse, or other houses, tenements, and buildings, outhouses and offices, yards, gardens, orchards, lands, and grounds respectively, which shall be so sold, and be applied by such churchwardens and overseers of the poor respectively, as part of the rates to be collected for the relief of the poor of the same parish, township, or place, or several parishes, townships, or places respectively."

And by stat. 43 *Geo.* 3. *c.* 110. § 1. After reciting that by stat. 22 *Geo.* 3. *c.* 83. § 20. It was among other things enacted, that in case any money should be borrowed under the powers of the said act, for the building any poorhouse or workhouse, or purchasing any land necessary to be used for that purpose, the assessments for the relief of the poor should continue at the same rate they were when such poorhouse or workhouse was first established, until the debts so contracted, and the interest thereof, should be fully discharged. 43 G. 3. c. 110

42 G. 3. c. 74 recited.

And also reciting that by stat. 42 *Geo.* 3. *c.* 74. it was enacted, that the guardians of the poor of any parish who had erected any poorhouse or workhouse, under the powers of the said therein recited act, should with the consent of the several persons to whom the same should be due and payable, yearly pay off any part of the money borrowed under the powers of the said recited act of 22 *Geo.* 3. not being less than one-twentieth part thereof, besides the interest which might be payable on the sum remaining undischarged; and in case such sum to be paid off should not in any one year be sufficient to discharge any one of the notes for 50*l.* issued pursuant to the directions of the said recited act, for se-

43 G. 3. c. 110. curing the money borrowed under the authority thereof, the same should from time to time remain in the hands of the overseers of the poor of such parish until it amounted to a sufficient sum to pay off and discharge any of the said notes.

And whereas doubts are entertained whether the said recited act of the 42 *Geo.* 3. has effectually relieved such parishes as have adopted the provision in the said act of 22 *Geo.* 3. from the burthensome effects thereof; it is therefore enacted, that so much of the said recited act of 22 *Geo.* 3. *c.* 83. § 20. as requires that the assessments for the relief of the poor shall continue at the same rate as they were when any poorhouse or workhouse was first established under the authority of the said recited act, until the debt contracted, and the interest thereof, should be fully discharged, shall be repealed.

Part of 22 G. 3. c. 83. § 20. requiring the assessments to continue, &c. repealed.

Assessments may be diminished.

§ 2. And such assessments shall from time to time be diminished to such amount as shall be deemed proper and necessary: provided always that the guardians of the poor, for the time being, of every such parish, shall yearly pay off or provide for a twentieth part at least of any monies which shall have been borrowed for the purpose aforesaid under the powers of the said act of 22 *Geo.* 3. and also shall duly keep down the interest of all monies which shall be so borrowed.

The guardians shall pay off a twentieth part of the borrowed money under 22 G. 3. c. 83.

Admitting paupers.

By stat. 22 *Geo.* 3. *c.* 83. § 28. Every person sent to the house shall deliver to the governor or his assistant, an order for his admission (in the form, or to the effect contained in the schedule to the act, No. XII.) signed by one of the guardians.

§ 29. But no person shall be sent to such poorhouse, except such as are become indigent by old age, sickness, or infirmities, and are unable to acquire a maintenance by their labour, and except such orphan children as shall be sent thither by order of the guardian with the approbation of the visitor, and except such children as shall necessarily go with their mothers thither for sustenance.

Children.

§ 30. All infant children of tender years, and who from accident or misfortune shall become chargeable to the parish or place to which they belong, may be either sent to such poorhouse, or be placed by the guardian with the approbation of the visitor, with some reputable person in or near the parish to which they belong, at such weekly allowance as shall be agreed upon, with the approbation of the visitor, until such child shall be of age to go to service, or be bound apprentice to husbandry, or trade, or occupation; and the visitor shall see that they are properly treated, or cause them to be removed and placed under the care of some other person; and when such child shall attain such age, he shall be placed out, at the expence of the place to which he shall belong, according to the laws in being: provided, that if the parents or relations of such poor child, so sent to such house or so placed out, or any other responsible person, shall desire to receive and provide for such poor child, the guardian shall dismiss him from the poorhouse, and deliver him to such parent, &c.: provided also, that nothing herein shall give any power to separate any child under the age of seven years from his parent or parents without their consent.

Persons able to work, but not willing.

§ 31. All idle or disorderly persons, who are able, but unwilling, to work or maintain themselves and families, shall be pro-

secuted by the guardians, and punished as idle and disorderly persons are directed to be by the vagrant act of 17 *Geo.* 2. (Repealed by stat. 5 *Geo.* 4. *c.* 83. see *tit.* Vagrants, Vol. V.) And if any guardian shall neglect to make complaint thereof against such person to some neighbouring justice within ten days after it shall come to his knowledge, he shall forfeit a sum not exceeding 5*l.* nor less than 20*s.*, half thereof to be paid to the informer, and half as other forfeitures are herein directed to be disposed of. 22 G. 3. c. 83.

§ 32. Where there shall be any poor person able and willing to work, but who cannot get employment, the guardian may agree for the labour of such poor person at any employment suited to his strength and capacity, and maintain him until such employment shall be procured, and during the time of such work, and receive the money earned, and apply it in such maintenance, and make up the deficiency; and if the money earned exceed the sum expended in maintenance, shall account for the surplus, which shall in one month be given to such poor person, if no further expences be then incurred; and if such poor person shall refuse to work, or run away from such employment, the guardian shall complain to a justice, who shall on conviction commit the offender to the house of correction, there to be kept to hard labour not exceeding three calendar months, nor less than one. Persons not able to get employment.

By § 1. From the time that any parish, township, or place shall have adopted the provisions of this act, so much of stat. 9 *Geo.* 1. *c.* 7. as respects the maintaining or hiring out the labour of the poor by contract shall be repealed. Farming out the poor to cease.

§ 2. Provided that the visitors and guardians may make agreements with any person for the diet or clothing of such poor persons who shall be sent to the houses provided by this act, and for their work and labour; so that no such agreement be made for longer than twelve months, and so as the same be under the controul of the visitor, guardian, and governor, and also of the justices where the house shall be, two of which justices, upon proof of abuse, shall have power to dissolve the contract. Agreement for diet or clothing.

§ 35. 37. On complaint upon oath to a justice, on behalf of any poor person belonging to any parish or place, that the guardian, upon application made to him, hath refused such poor person proper relief, the justice (on enquiry into the circumstances upon oath), by writing under his hand, may order some weekly or other relief, or direct such guardian to send him to the poor house, if he shall appear to be a fit object, to be kept and provided for there; which order shall be complied with by the guardian within two days after he shall receive the same, on pain of 5*l.*, of which sum so much shall be paid to such poor person as the justice shall direct, the remainder to be applied as the other penalties by this act. Occasional relief ordered by the justices.

§ 35. Or if it shall appear that such person is able and willing to work, but wants employment, the justice may order the guardian to procure him maintenance and employment in the manner hereinbefore directed, on pain of 5*l.* for neglect by the guardian after due notice: Or if such person shall appear to be an idle or disorderly person, and has not used proper means to get employment; or that the husband or father of such person making such complaint, is an idle or disorderly person, able to work, but by his neglect of work, or for want of seeking employment, or by spending the money he earns in alehouses or places If the justice shall find that the complainant is an idle person, he may commit him to the house of correction.

22 G. 3. c. 83. of bad repute, doth not maintain his wife and children; the justice may commit the husband of such poor woman, or the father of such poor child, to the house of correction for any time not exceeding three calendar months, nor less than one.

§ 36. Provided, that in places where a visitor is appointed, application shall be first made to the guardian; and if he refuses redress, then application shall be made to the visitor; and if he refuses, then application shall be made to a justice.

Where the guardian and visitor of a parish, which had adopted the provisions of stat. 22 G. 3. c. 83. upon application to them for relief by a pauper for herself and children, directed them to be received into the poorhouse, Held that one justice had not any jurisdiction upon complaint to him by the pauper to order relief out of the poorhouse.

Rex v. *C. Laughton, H.* 54 *Geo.* 3. 2 *M. & S.* 324. *Bott, Cont.* 40. The defendant was convicted by two justices at a special sessions, and fined 30*s.* for disobeying the order of one justice, under stat. 33 *Geo.* 3. *c.*55. for the payment of 4*s.* for the relief of *Mary Lewis* and her children. Upon appeal to the general quarter sessions, the conviction was confirmed, subject to the opinion of the Court of *K.B.* upon the following case: The parish of *West Walton* is incorporated under stat. 22 *Geo.* 3. *c.* 83. for the maintenance of its poor; in which parish a poorhouse is erected and fitted up for the reception of the poor. On application for relief by the said *M. L.* for herself and her two children, the guardian and the visitor appointed under the said act severally directed them to be received into the poorhouse; whereupon the justice made the above order, directing a pecuniary relief out of the poorhouse. On the appeal, the question stated for the opinion of the Court is, whether the magistrate had power and authority under stat. 22 *Geo.* 3. *c.* 83., to make the said order for the pecuniary relief of the paupers out of the poorhouse. — After argument, Ld. *Ellenborough* C. J. said, the justice does not affect to determine upon the ground of its being a qualified refusal of relief. If proper relief has not been refused, the justice has not any jurisdiction. The visitor, to whom it is referred by law, as a part of his duty, to say whether the relief shall be given in or out of the poorhouse, has decided that question, and has determined it to be proper relief. If it depended on the choice of the pauper, the poorhouse would be useless. The visitor having adjusted it, the matter was at an end, and not within the cognisance of the magistrate, and therefore the infliction of this penalty was not warranted.—*Le Blanc* J. The 7th section of the statute, which has been relied on in argument as putting the guardian on the footing of an overseer, must be taken with reference to the general policy of the act in which it is contained, and when the 36th section of the same act directs that application shall be made both to the guardian and visitor, before any application is made to a justice, and when it adds that it is the duty of the visitor to adjust matters of that sort, that is, whether it is most proper to relieve in or out of the poorhouse, the liability of the guardian as overseer, imposed by the 7th section, must be controuled by the subsequent clause. The visitor must always determine whether the party is to be relieved in or out of the poorhouse, otherwise the whole policy of the act would be avoided. The other judges agreed. Order of sessions quashed. See also *Rex* v. *Keer and Rich*, 5 *T. R.* 159. 1 *Bott*, 421.

59 G. 3. c. 12. Justices empowered to order relief in certain cases for a limited time.

Stat. 59 *Geo.* 3. *c.* 12. § 2. Enacts, that when any complaint shall be made to any justice of the peace, of the want of adequate relief, by or on the behalf of any poor inhabitant of any parish in which the relief of the poor is or shall be under the management of guardians, governors, or directors appointed by virtue of

special or local acts, such justice shall not proceed therein, or take cognisance thereof, unless it shall be proved on oath before him, that application for such relief hath been first made to, and refused by such guardians, governors, or directors; and in such case the justice to whom the complaint shall be made may summon the overseers of the poor, or any of them, to appear before any two of his majesty's justices of the peace, to answer the complaint; and if upon the hearing thereof it shall be proved on oath, to the satisfaction of the justices who shall hear the same, that the party complaining, or on whose behalf the complaint shall be made, is in need of relief, and that adequate relief hath been refused by such guardians, governors, or directors, it shall be lawful for such justices to make an order, under their hands and seals, for such relief as they, in their just and proper discretion, shall think necessary (reference being also had by such justices to the character and conduct of the applicant); provided, that in every such order the special cause of granting the relief thereby directed, shall be expressly stated, and that no such order shall be given for or extend to any longer time than one month from the date thereof: provided that it shall be lawful for any justice to make an order for relief *in any case of urgent necessity*, to be specified in such order, so as such order shall remain in force only until the assembling of such guardians, governors, or directors, as aforesaid, to which such case shall relate. 59 G. 3. c. 12.

One justice may order temporary relief, in cases of urgent necessity.

§ 27. After reciting that by stat. 22 *Geo.* 3. *c.* 83. it is enacted, with regard to parishes which have adopted the provisions thereof, and for which a visitor shall have been appointed, that no guardian of the poor shall be summoned to appear before any justice of the peace, upon complaint or application to such justice for the relief of any poor person, unless application shall have been first made by the person so complaining to the guardian, and upon his refusal of redress, to the visitor: and whereas in many cases, by reason of the absence of the visitor, or the distance of his residence, it may not be in the power of the complainant to make the application by the said act required; for remedy thereof it is enacted, "that if it shall be made to appear to any justice to whom any such complaint or application for relief shall be made, that the visitor of the parish or united parishes from which relief shall be sought is absent from home, or is resident more than six miles from the place of abode of the complainant, and that application for relief hath been made to the guardian, and hath been refused, it shall be lawful for such justice to summon the guardian to appear before him to answer such complaint, and to proceed thereon, and make such order therein, as the case shall require, in like manner as in cases where application hath been made to the visitor, in the manner by the said act directed."

Cases in which relief by incorporated parishes may be ordered without previous application to the visitor.

By stat. 22 *G.* 3. *c.* 83. § 24. The poor persons sent to every such house shall be maintained at the general expence of the parishes or places so uniting. 22 G. 3. c. 83. Maintenance.

§ 24. And the treasurer, with the assistance of the governor, shall provide all necessaries for maintenance of such poor, and keep an account thereof.

§ 33. The guardian shall provide, at the expence of such parish or place, suitable clothing for the person sent by him to such poorhouse; which if he shall neglect to do, the governor, Clothing.

22 G. 3. c. 83. or one of the guardians of such house, shall complain to a neighbouring justice, who shall summon the guardian so neglecting, to answer such complaint, and direct him to provide such clothing, as shall appear to the justices to be necessary; and if he shall make default in providing the same within ten days after such direction, the justice shall order the governor of such poorhouse, or the guardian making such complaint, to provide the same, and demand from the guardians making neglect, the charges for such clothing, and in default of payment shall levy the price thereof, together with costs and charges, by distress and sale of the goods of such guardian so making default.

As to contractors for providing maintenance for the poor.

[See stat. 45 *Geo.* 3. *c.* 54. *ante*, p. 194., whereby contractors for providing maintenance for the poor must reside in the parish. See also stat. 57 *Geo.* 3. *c.* 127. § 7. *ante.*]

Monthly meetings.

§ 24. And there shall be a meeting of the guardians at the poor house, on the first *Monday* in every month, to state and examine the accounts of the preceding month.

§ 24, 25. At which meeting the treasurer shall produce his accounts, and the money due to him shall be settled and adjusted in proportion to the sums paid by the respective parishes or places on a medium of three years, next before the date of such agreement in writing. And the churchwarden or overseer, who shall have the custody of the poors' rates or account, shall attend on four days' notice, and give an account what has been the expence at a medium of three years, or in default shall forfeit 5*l.*

§ 26. And if the guardian shall not attend the monthly meeting, or send some person (substantial inhabitant) to attend and make payments for him (if by some accident he cannot attend himself), he shall forfeit not exceeding 5*l.* nor less than 40*s.*

Justices may hold special sessions.

§ 16. The justices may hold special sessions for the purposes of this act; on giving proper notice to the several justices, peace officers, and guardians.

Justices in a different limit may act in certain cases.

§ 15. If within any limit, wherein any poorhouse be situate there being no acting justice, or only one acting justice, or if the justice or justices who usually act be absent, or be incapacitated to act, it shall be lawful for any justice or justices of any other limit to act in all such cases.

Pauper embezzling goods.

§ 40. If any poor person sent to such house shall embezzle or wilfully waste any of the goods or materials committed to his care, or shall take or carry away without permission of the governor, any goods or materials provided for the use of the house, or belonging to any person residing there, he shall upon complaint on oath made on conviction, be committed to the house of correction, there to be kept to hard labour, not exceeding six calendar months, nor less than two. Et vide *ante*, p. 32.

Officer not to be a dealer.

§ 42. If any visitor, guardian, or governor, shall sell or furnish any materials, goods, clothes, victuals, or provisions; or do any work in his trade for the use of any workhouse, poorhouse, or poor persons within any place for which he shall be appointed to act; or be concerned in trade or interest with any person who shall sell or furnish the same; he shall forfeit not exceeding 20*l.* nor less than 5*l.* on due conviction by a justice of peace. See *West* v. *Andrews*, 1 *B. & C.* 77. *ante*, p. 35.

Occasional poor falling sick.

§ 38. If any poor person shall be retarded on his passage through any parish or place in which he has no legal settlement,

by reason of any accident, sickness, or bodily infirmity, without means of subsistence, or if proceeding to the place of his settlement, the guardian near the place where such distressed object shall be, shall provide for him lodging and suitable nourishment and assistance (and also clothing if necessary), until he can be removed with safety; and when he shall be fit to be removed, shall carry him to some neighbouring justices, who shall examine him on oath touching the place of his settlement, and make an order for his removal thither if they think fit. And the parish officer who shall so provide for such poor person shall make a charge of the expences: which, on being allowed and certified by the justices, before whom he shall be taken, or some neighbouring justice, shall be paid by the guardian of the parish or place where such poor person shall be settled, if that can be discovered, and be within the county; in default of payment, the same shall be levied upon the goods and chattels of any such guardian. so making default, after summons, by warrant of a justice: or, if such person shall die before he can be so examined, or shall be found dead in any parish or place to which he did not belong, the guardian there shall cause him to be buried in the parish or place where he so died, or was found dead, and make a charge of the expences thereof, which shall be allowed and certified by a justice, after examining into his settlement, and shall be paid by the guardian of the place where such person shall appear to have been settled, if it be within that county; but if the settlement cannot be discovered, or shall not be within that county, the same shall be paid by the treasurer out of the county rate, on the production of such allowance and certificate. 22 G. 2. c. 83.

§ 41. Whereas it frequently happens, that poor children, pregnant women, or persons afflicted with sickness or some bodily infirmity, are enticed, taken, or conveyed by parish officers, or other persons, from one parish or place to another, without any legal order of removal, in order to ease the one parish or place, and to burden the other with such poor persons; if any guardian or other person shall so entice, take, convey, or remove, or cause or procure to be so enticed, taken, conveyed, or removed, any such poor person from one parish or place to another, which shall adopt the provisions of this act, without an order of removal from two justices, he shall forfeit not exceeding 20*l.* nor less than 5*l.* **Enticing poor persons to remove without a warrant.**

§ 45. All penalties inflicted by this act shall be recovered before one justice of the jurisdiction where the offender dwells, by distress, upon conviction in default of payment, after due summons and demand made; for want of sufficient distress, the offender to be committed to the house of correction not exceeding six calendar months, nor less than one. Which said penalties, not herein otherwise directed, shall be paid to the treasurer towards defraying the monthly expences of the house. **Penalties.**

§ 34. Finally, there are rules, orders, and regulations specified in the act to be observed at every such poorhouse, with such additions as shall be made by the justices at a special sessions; provided, that such additions be not contradictory to these same rules and orders, and that the same be not repealed at the quarter sessions: and the governors shall cause the same rules to be **Special rules and forms.**

22 G. 3. c. 83. printed in plain legible characters, and fixed up in some conspicuous part of such house.

For forms of proceedings, see the act. There are also in the act special precedents of forms of proceeding in some of the most material instances; which rules and forms being somewhat long, and not capable of being abridged, it is thought proper for these and other minute particulars to refer to the act itself.

Appeal. By stat. 22 *Geo.* 3. *c.* 83. § 46. Persons aggrieved by any act done by any justice out of sessions, concerning the execution of this act, may appeal to the next general quarter sessions, giving eight days' notice to the party against whom complaint is made, and security by recognisance to be acknowledged before a justice, with a sufficient security to pay the costs of the appeal if determined against the appellant. The justices to hear and determine such appeals, and to award costs for or against appellants as they shall see cause; which determination shall be final, and not removed by *certiorari*.

36 G. 3. c. 10. Further assessments may be made. And by stat. 36 *Geo.* 3. *c.* 10. § 1. after reciting, that of late several acts have been made for the better relief of the poor in particular incorporated districts; and certain persons are therein appointed to assess the poor's rates in such places, but the money so to be raised is limited not to exceed a certain sum in one year; and that by reason of the late increase of the price of corn and other necessary articles of life, the amount of the assessments so limited are insufficient, and the expence of maintaining the poor since 1st *January*, 1795, has exceeded the whole amount of the rates which could be raised in the present year, whereby debts have been incurred, so that it is become necessary that the sums to be assessed should be enlarged; *it is enacted*, that it shall be lawful for the directors and acting guardians within any such district, or any other person by whatsoever name called, to whom power is given of appointing the sums to be assessed, at any annual, quarterly, or other general meeting, whenever the average price of wheat at the corn-market in *Mark-lane*, for the quarter immediately preceding such meeting, shall have exceeded the average price of wheat at the same market during those years from which the average amount of the poor's rates was taken upon the passing of the several incorporating acts respectively, to assess the several parishes or places which now are, or usually have been, charged to the poor's rates therein, in such respective sums of money as the said directors or other persons as aforesaid, shall think necessary for the support of the poor for the current quarter, and for paying the interest of money borrowed and due by virtue of the said acts respectively, and of any debts which may have been incurred since 1st *January*, 1795, in the maintenance of the poor and other purposes of the said act, notwithstanding such sums so to be assessed shall exceed the amount of the assessments limited by such respective acts in any one year.

To be recovered as former assessments. Provided always, that the assessments to be made by virtue of this act, shall be assessed, made, collected, and paid, in the same manner, and subject to the same restrictions, regulations, limitations, and powers of appeal; and with like powers and remedies for compelling payment thereof, as the assessment made by virtue of the several incorporating acts.

Provided also, that the sums to be assessed by virtue of this act, shall be in the same proportions as the assessments which have hitherto been made by virtue of the said incorporating acts; and after 1st *January*, 1798, the sums to be assessed shall never exceed, in any one year, the amount of double the sum at present raised by virtue of any incorporating act now existing. 36 G. 3. c. 10. Not to exceed double the sums at present raised.

But by stat. 52 *Geo*. 3. *c*. 73. so much of stat. 36 *Geo*. 3. *c*. 10. as limits or provides that from and after *January* 1st, 1798, the sums to be assessed by virtue thereof on any parish, hamlet, or place, shall never exceed in any one year double the sum then raised by virtue of any incorporating act then existing, is repealed. 52 G. 3. c. 73. So much of 36 G. 3. c. 10. as limits the assessment for the poor repealed.

By stat. 49 *Geo*. 3. *c*. 124. § 5. reciting that whereas certain rules, orders, bye-laws, and regulations, are appointed to be observed and enforced in every poorhouse established under the authority of stat. 22 *Geo*. 3.; and whereas it is expedient that such rules, orders, bye-laws, and regulations should be extended to poorhouses and workhouses established in other parishes; it is enacted, that any two or more of his majesty's justices of the peace, may at any petty sessions direct such rules, orders, bye-laws, and regulations, or any of them, to be observed and executed in any parishes within their respective divisions or districts, as fully as in those incorporated by the said act. 49 G. 3. c. 124. Petty sessions may direct the regulations prescribed by recited act to be observed.

Stat. 50 *Geo*. 3. *c*. 50. § 1. after reciting stats. 22 *Geo*. 3. *c*. 83. and 49 *Geo* 3. *c*. 124. § 5. and that it is expedient that the benefit of 22 *Geo*. 3. *c*. 83. for the government of poorhouses and workhouses should be extended to parishes which shall not have adopted the provisions of the said acts, enacts, that any two or more of his majesty's justices of the peace, within their respective limits may at any special session direct the rules, orders, and regulations, in the schedule to the said act of the 22 *Geo*. 3. specified and contained, or any of them, with such additions as shall be made by such justices, to be observed and enforced in the workhouses or poorhouses, or any houses set apart for that purpose, although there should be no master or mistress to superintend the same, of any parish or place within their respective divisions or districts, as fully and effectually as the rules and orders by the said act of the 22 *Geo*. 3. established, are to be observed and enforced within the parishes adopting the provisions of the same act; and that it shall be lawful for two or more such justices, in any special session from time to time as they shall see occasion, to add to and alter the rules, orders, and regulations which shall at any special sessions have been made and ordered to be observed, provided that no addition or alteration to be made by such justices shall be contradictory to the rules, orders, and regulations established by the said act of the 22 *Geo*. 3. and provided that the same shall not be repealed by the justices at their quarter session of the peace; and for enforcing and carrying into execution such rules, orders, and regulations in every parish and place where the same shall be established by virtue of this act, every justice of the peace shall for that purpose have the powers by the said act of the 22 *Geo*. 3. vested in visitors of the poor; and all churchwardens and overseers within their respective parishes and townships, shall have and exercise the powers, 50 G. 3. c. 50. Two justices may direct the regulations specified in schedule of 22 G. 3. c. 83. to be observed in workhouses where no master or mistress is appointed to superintend; and may alter such regulations.

and shall perform the duties by the same act vested in and imposed upon governors of the poor.

Breach of rules under this act to be punished.

By stat. 50 *Geo.* 3. *c.* 50. § 5. Any breach of the rules and orders to be put in force by virtue of this act, shall be punished in such manner as is by the said act directed for the breach of the rules and orders to be enforced under the before recited act of the 22 *Geo.* 3. *c.* 83. [See 54 *Geo.* 3. *c.* 170. § 7. *ante*, Sect. III. 4. page 205.]

§ IV. Of the Overseers' Accounts: and herein,

1. *Of the accounts, and the justices' power to enforce accounting, and payment of the balance.*
2. *Of appeal against the overseers' accounts.*

(1.) Of the Accounts, and the Justices' Power to enforce accounting, and Payment of the Balance.

The churchwardens and overseers, during the continuance and on the determination of their office, are required to pass certain accounts connected with the parochial provision for the poor. They are to account to the quarter sessions for all monies which

5 G. 1. c. 8.

they may receive under stat. 5 *Geo.* 1. *c.* 8., authorising levies on the property of husbands and parents who leave their children on

17 G. 2. c. 5.

the parish: and for what they may receive under stat. 17 *Geo.* 2. *c.* 5. § 20. authorising levies in certain cases on the property of luna-

22 G. 3. c. 83.

tics. The workhouse act (22 *Geo.* 3. *c.* 83.) § 8. directs that the accounts of the churchwardens and overseers (respecting their payments under this act) shall be examined at every monthly meeting of guardians, and shall be examined and passed quarterly by the visitor, having been first verified on oath before a justice: besides which, the same statute afterwards, § 25. enacts that the churchwarden or overseer who shall have the custody of the poor's rates, assessments, or accounts, shall, whenever requested, after four days' notice, produce them to the persons nominated in the agreement for uniting parishes made by the guardians under that

43 G. 3. c. 47.

act on penalty of 5*l.*; and by the militia act of 43 *Geo.* 3. *c.* 47. § 21. it is enacted, that all accounts of allowances to be reimbursed under that act shall be made up at the end of every successive six months, or shorter period, from the first commencing payment thereof, and signed by the justices granting certificates for the reimbursement, or some other justices of the same county, riding, division, or place, within one month after the respective periods to which such accounts shall be made up, and the money due shall as soon as possible be demanded of the overseers or treasurers required to make the reimbursement; and no such sum shall be demandable unless the same shall have been so certified within one month as aforesaid, and delivered to the reimbursing overseer or treasurer within three months after such certifying

18 G. 3. c. 19.

thereof. And stat. 18 *Geo.* 3. *c.* 19. directs the overseers to lay the accounts of constables, headboroughs, and tything-men, for reimbursement before the parishioners quarterly within fourteen days after the same have been delivered by the constables. *See Vol. I. title* Constable.

Exclusively of these accounts, which are passed during the

subsistence of their office, there are others which the overseers have to settle at its determination. Stat. 7 *J.* 1. *c.* 3. which entrusts them with the management of certain monies charitably given for the binding out of apprentices in places not corporate, requires that they shall, every year in *Easter* week, or within one month after *Easter* day, make an account before four, three, or two justices of all sums employed by them in binding apprentices under that act, and of all bonds and obligations for payment of such sums, and of all monies remaining in their hands not employed: and at (or within ten days after) making the account deliver to their successors all such obligations, bonds and money remaining unemployed. 7 J. 1. c. 3.

We now come to the final account with the parish: which account they and their executors are enjoined to make up and pass at the expiration or other sooner determination of their office under pain of commitment. Final account.

By stat. 43 *El. c.* 2. § 2. The churchwardens and overseers shall within four days after the end of their year, and after other overseers nominated, make and yield up to two justices (1 *Q.*) a true and perfect account of all sums by them received, or rated and sessed and not received, and also of such stock as shall be in their hands, or in the hands of any of the poor to work, and of all other things concerning their office; and such sum or sums of money as shall be in their hands shall pay and deliver over to the said churchwardens and overseers newly nominated and appointed. 43 El. c. 2. *Sic.*

§ 4. And the subsequent churchwardens or overseers, by warrant from any two such justices, may levy by distress and sale of the offender's goods the said sums or stock which shall be behind on any account to be made; and in defect of such distress, two such justices may commit him to the common gaol, there to remain without bail or mainprise, until payment of the said sum and stock.

And also any such two justices may commit to the said prison every one of the said churchwardens and overseers, which shall refuse to account, there to remain without bail or mainprise, until he have made a true account, and satisfied and paid so much as upon the said account shall be remaining in his hands.

And by stat. 17 *Geo.* 2. *c.* 38. it is enacted as follows: 17 G. 2. c. 38.

§ 1. The churchwardens and overseers of the poor shall yearly and every year, within fourteen days after other overseers shall be nominated and appointed to succeed them, deliver in to such succeeding overseers, a just, true, and perfect account in writing, fairly entered in a book or books to be kept for that purpose, and signed by the said churchwardens and overseers hereby directed to account as aforesaid under their hands, of all sums of money by them received, or rated, and assessed, and not received, and also of all goods, chattels, stock, and materials, that shall be in their hands, or in the hands of any of the poor, in order to be wrought, and of all monies paid by such churchwardens and overseers so accounting, and of all things concerning their said office. At what time parish officers shall make up their accounts.

§ 1. And shall also pay and deliver over all sums of money, goods, chattels, and other things, as shall be in their hands, unto such succeeding overseers of the poor; which said account shall

17 G. 2. c. 38. be verified by oath, or by the affirmation of persons called *Quakers*, before one or more of H. M.'s justices of the peace, which said oath or affirmation such justice or justices is and are hereby authorised and required to administer, and to assign and attest the caption of the same, at the foot of the said account, without fee or reward.

Books may be inspected paying 6d.. and copies taken paying 6d. for three hundred words.

§ 1. And the said book or books shall be carefully preserved by the churchwardens and overseers, or any of them, in some public or other place in every parish, township, or place; and they shall and are hereby required to permit any person there assessed, or liable to be assessed, to inspect the same at all seasonable times, paying sixpence for such inspection, and shall, upon demand, forthwith give copies of the same, or any part thereof, to such person, paying at the rate of sixpence for every three hundred words, and so in proportion for any greater or less number.

Penalty on parish officers not accounting as this act directs.

§ 2. In case such churchwardens and overseers of the poor or any of them, shall refuse or neglect to make and yield up such account, verified as aforesaid, within the time hereinbefore limited or appointed, or shall refuse or neglect to pay and deliver over such sum or sums of money, goods, chattels, and other things in their hands, as by this act is directed; in either of the said cases, it shall and may be lawful to and for any two or more justices of the peace, to commit (*a*) him or them to the common gaol, until he

(*a*) Information against an Overseer for refusing to account, &c.

County of ——— } THE information and complaint of *A. J.* overseer of the poor of the parish of ——— in the county of ——— made on oath before us *J. P.* and *K. P.* esquires, two of his majesty's justices of the peace in and for the said county, this ——— day of ——— in the year of our Lord one thousand eight hundred and ———, who saith,* that *A. O.* now or late of the parish of ——— aforesaid, yeoman, was, on the twenty-fifth day of March, in the year of our Lord one thousand eight hundred and ———, duly appointed one of the overseers of the poor for the said parish of ———; that on the ——— day of ——— last past he the said *A J.* and one *B. J.* of the said parish of ———, yeomen, were duly appointed to succeed the said *A. O.* and one other, as overseers of the poor of the said parish of ——— ; that by an act passed in the seventeenth year of the reign of his late majesty king George the second, intituled, "*An act for remedying some defects in the act made in the forty-third year of the reign of queen* Elizabeth, intituled, *An act for the relief of the poor*," it is enacted "that from and after the twenty fourth day of *June*, one thousand seven hundred and forty-four, the churchwardens and overseers of the poor shall yearly and every year, within fourteen days after other overseers shall be nominated and appointed to succeed them, deliver in to such succeeding overseers, a just, true and perfect account in writing, fairly entered in a book or books to be kept for that purpose, and signed by the said churchwardens and overseers hereby directed to account as aforesaid, under their hands, of all sums of money by them received, or rated and assessed and not received; and also of all goods, chattels, stock, and materials, that shall be in their hands, or in the hands of any of the poor, in order to be wrought, and of all monies paid by such churchwardens and overseers so accounting, and of all other things concerning their said office; and shall also pay and deliver over all sums of money, goods, chattels and other things, as shall be in their hands, unto such succeeding overseers of the poor; which said account shall be verified by oath, or by the affirmation of persons called *Quakers*, before one or more of his majesty's justices of the peace, which said oath or affirmation such justice or justices is and are hereby authorised and required to administer, and to sign and attest the caption of the same at the foot of the same account;" *and further*, "That in case such churchwardens and overseers of the

or they shall have given such account, or shall have paid or yielded up such monies, goods, chattels, and other things in their hands as aforesaid.

A conviction by two justices under stat. 17 G. 2. c. 38., upon complaint of the overseers of a parish against the late overseer, for refusing and neglecting to deliver over to them a certain book belonging to the parish called *The Bastardy Ledger*,

Groome v. *Forrester, D.D. and Another, T.* 56 *Geo.* 3. 5 *M. & S.* 314. Trespass for assault and false imprisonment against the defendants, justices of the peace for the town and liberties of *Wenlock*, in the county of *Salop*. Plea not guilty. At the trial before *Holroyd* J., at *Salop* Lent assizes, 1816, there was a verdict for the plaintiff, damages 5*l.*, with liberty to the defendants to move to enter a nonsuit. A rule *nisi* for this purpose having been obtained, and the case very fully argued. *Cur. adv. vult.* — Lord *Ellenborough* C. J. afterwards delivered the judgment of the Court. This was a motion to set aside a verdict against the defendants, justices of the peace for the town and liberties of *Wenlock*, in the county of *Salop*, in an action for false imprisonment, and to enter a nonsuit. The imprisonment complained of was the commitment of the plaintiff to the common gaol at

poor, or any of them, shall refuse or neglect to make and yield up such account verified as aforesaid, within the time hereinbefore limited or appointed, or shall refuse or neglect to pay and deliver over such sum or sums of money, goods, chattels and other things in their hands, as by this act is directed, in either of the said cases it shall and may be lawful to and for any two or more justices of the peace, to commit him or them to the common gaol, until he or they shall have given such account, or shall have paid and yielded up such monies, goods, chattels and other things in their hands as aforesaid;" That the said *A. O.* hath refused and neglected to make and yield up to his said successors, such accounts verified as aforesaid within the time limited or appointed, or at any time since, and has refused and neglected to pay and deliver over to his said successors, such sum or sums of money, goods, chattels, and other things as aforesaid as are in his hands, verified by oath before one or more of his majesty's justices of the peace within the time limited or appointed as aforesaid, or at any time since,† and therefore he the said *A. J.* prays that justice may be done in the premises.

Before us, *J. P.* *A. J.*
K. P.

Commitment of an Overseer for refusing and neglecting to account, founded on the foregoing Information.

County of ——— } TO the constable of the parish of ——— in the said county, and to the keeper of the common gaol at ——— in the county of ———. Whereas information and complaint upon oath have been made before us *J. P.* and *K. P.* esquires, two of his majesty's justices of the peace in and for the said county, by *A. J.* one of the overseers of the poor of the parish of ——— in the said county, [*here insert the whole of the foregoing information, from* * *to* †, *and then proceed thus.*] And whereas the said *A. O.* having appeared before us, in pursuance of our summons, to answer to the said information and complaint [*or as the case may be*], and the same having been duly proved, as well upon the oath of *A. J.* as otherwise; these are therefore to charge and command you, the said constable, forthwith to apprehend the said *A. O.* and him safely to convey to the common gaol of the said county of ——— at ———, in the said county, and there deliver him to the keeper thereof, together with this precept: And we do hereby also command you the said keeper of the said common gaol, to receive the said *A. O.* into your custody in the said common gaol, and him there safely keep until he shall have given such account, and shall have paid or yielded up such monies, goods, chattels, and other things in his hands as aforesaid. Given under our hands and seals at ——— in the said county of ———, the ——— day of ———, in the year of our Lord one thousand eight hundred and ———.

Groome v. Forrester.

convicting him of the said offence, and adjudging that he should be committed to the common gaol, to be safely kept *until he should have yielded up all and every the books concerning his said office of overseer belonging to the parish*, was held void as to the adjudication respecting the imprisonment, for excess, the same extending beyond what was previously required of the person convicted; and a warrant of commitment founded on this conviction, and directing the gaoler to keep him in the terms of the adjudication, was also holden void *in toto*, for which trespass and false imprisonment would lie against the justices, although the conviction had not been quashed.

Shrewsbury, under the warrant of the defendants as magistrates, founded upon a conviction of the plaintiff as late overseer of the parish of *Brosely*, in that county; which conviction was had before the defendants, under the 17 *Geo.* 2. *c.* 38. against the plaintiff, for not delivering over to the succeeding overseers of the parish a certain book belonging to the parish, called the *Bastardy Ledger*, in breach of his duty under that statute, which required him to deliver over all such sums of money, goods, chattels, and other things, as should be in his hands, to such succeeding overseers. In case of his refusal or neglect so to do, the statute (§ 2.) authorizes two or more justices of the peace to commit him to the common gaol, until he shall have paid and yielded up such monies, goods, chattels, and other things in his hands. The conviction, as far as relates to the withholding of the particular book in question, the offence charged in the information, is correct. After finding him guilty thereof, it proceeds to adjudge that *Thomas Groome* (the plaintiff and late overseer) for his offence aforesaid, (that is, in not delivering over the particularbook, *The Bastardy Ledger*,) be forthwith committed to the common gaol at *Shrewsbury*, to be safely kept, "*until he shall have yielded up all and every the* books *concerning his said office of overseer, belonging to the said parish*." That is the adjudication; and the warrant of commitment follows the adjudication, and of course directed the gaoler to keep *Groome* until he should have yielded up all and every the books concerning his office of overseer; thereby, in effect, casting upon the gaoler the function of enquiring and determining, what were "all and every the books concerning the office of overseer," upon the yielding up of which the gaoler was to discharge his prisoner, instead of requiring the gaoler to detain his prisoner, (as it should have done) until he should have yielded up the particular book specified and described in the information, and for the non-delivery of which he was convicted. Such a commitment was certainly not authorized either by the letter or the spirit of the act of parliament, and subjected the prisoner to the risk of an imprisonment for an indefinite period, viz. until he had complied with a condition of greater extent than was imposed by the act of parliament; and where the gaoler who should have to detain him under the warrant had no adequate means of judging, whether his prisoner should have, in fact, complied with the terms of such condition, and, of course, whether he was entitled to his discharge or not. This, it will be observed, is a conviction and commitment on the ground of a supposed contumacy; but the defendant could have been guilty of no contumacy in respect of the non-delivery of any other book or thing, than that book which alone he had been required to deliver, viz. *The Bastardy Ledger*. The conviction and commitment, therefore, in respect of a supposed contumacy to any greater extent than that in which obedience had been previously required from him, must of course be unfounded. Previously to commitment for refusing to do a thing, there must have been a charge and proof, and the party cannot be committed "*until he does something*," which is not charged and proved upon him that he has previously refused to do. Assuming that the warrant is in this respect illegal and void, the question is whether it be therefore void *in toto*; and if it be, whether the defendants, as com-

mitting magistrates, are liable to an action of trespass and false imprisonment for having committed the plaintiff thereupon. And that it is void *in toto*, the case of *Milward* v. *Coffin*, 2 *Bl. R.* 1331. is an authority; there *Gould* J., in the absence of *De Grey* C. J., said, "It is fairly and candidly conceded, that if one of the rates be illegal, the whole warrant is bad; and I take the first to be illegal, for assessing the plaintiff beyond the extent of his occupation. All that related to the assessment of lands, not in the occupation of the plaintiff, was *coram non judice;* the justices therein exceeded their jurisdiction, and their determination is a nullity." In 2 *Inst.* 52. there are to be found several good rules in respect to commitments: the fifth of which is, "The warrant, or mittimus, containing a lawful cause, ought to have a lawful conclusion, viz. and him safely to keep until he be delivered by law, &c. and not until the party committing doth farther order." Likewise, in 2 *Inst.* 591. there is a farther rule: "Now as the *mittimus* must contain the cause, so the conclusion must be according to law, viz. the prisoner safely to keep, until he be delivered by due order of law, and not until he that made it shall give other order, or the like." The case of *The Mayor and Churchwardens of Northampton*, *Carth.* 152., is a leading case, upon the proper form of conclusion of a commitment, until a particular act should be done by the party committed. That case was thus. The mayor of *Northampton* committed the churchwardens for refusing to account before him, and the warrant of commitment concluded in the common form, (viz.) "until they be duly discharged according to law;" and all this appearing upon the return to a *habeas corpus*, the Court held the commitment void, because the warrant ought to have been thus concluded, (viz.) there to remain until he shall account, as the statute 43 *Eliz. c.* 2. doth appoint. And the difference is, where a man is committed as a criminal, and where only for contumacy (as in this case,) in refusing to do a thing required, &c.; for in the first case, the commitment must be until discharged according to law; but in the latter, until he comply and perform the thing required; for in that case he shall not lie till a sessions, but shall be discharged upon the performance of his duty. Wherefore the churchwardens were discharged by rule of court. *Bracy*'s case is an authority to the same effect; it is reported, in 5 *Mod.* 308., 1 *Salk.* 348., 1 Ld. *Raym.* 99.; also in the margin of *Carthew*, 153., from which I cite it. One *Bracey* was committed by commissioners of the statute of bankrupts, for refusing to answer; and they concluded their warrant, that he be committed to prison, there to remain, "until he conform himself to our authority, and be thence delivered by due course of law;" and upon the return of a *habeas corpus*, he was discharged, because this conclusion was not pursuant to the statute of bankrupts; and the mayor of *Northampton*'s case was cited for an authority. In Lord *Raymond*'s report, it is laid down, that if he had been committed "until he should conform to their authority, in the special matter, it had been good. And of that opinion was Lord *Holt;* and he said, that the word "submit" (which is the word in the statute, and not "conform") does not mean an act of humble submission, but only to make answer to the question proposed." In *Salkeld*'s report, the Court held the

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word 'conform,' instead of the word 'submit,' to be well enough, because it was of the same sense; but because the commissioners had other authorities besides that of examining, and it did not appear but that it might require a submission to them in other respects, and for that all powers given in restraint of liberty must be strictly pursued, and in this case they had but a special authority, and must not exceed it, they held the return naught. *Yaxley's* case, *Carth.* 291. was "a commitment by the Secretary of State, under the stat. 35 *Eliz.*, for refusing to answer whether he was a Jesuit, &c., and on a *habeas corpus* he prayed to be bailed. The exception to the commitment was, that the conclusion thereof, was "there to remain until he shall be from thence discharged by due course of law," when the words of the statute are, "until he shall answer unto the questions;" and therefore the commitment ought to be special, according to the statute; and the churchwardens of *Northampton's* case was cited and relied on; and for that objection the court held the commitment ill. Other cases might be cited to the same effect, such as *Rex* v. *Hall*, *Cowp.* 60. The foregoing cases are cases of discharge from commitment, on the ground of an illegality apparent on the face of the warrant. The two following cases, *Baldwin and Wife* v. *Blackmore*, 1 *Burr.* 595. and *Crepps* v. *Durden*, *Cowp.* 640, establish that in such case, that is, of warrants illegal upon the face of them, for an excess of jurisdiction in the magistrate, trespass is maintainable against the committing magistrate; and this was held in the latter case, although the conviction had not been quashed. In *Baldwin and Wife* v. *Blackmore*, a warrant to commit the wife, as an idle and disorderly person, for returning with her husband to the parish from whence removed, without a certificate, was holden to be void, and that trespass lay for the imprisonment under it. So, where the warrant ought to be to imprison for a month, and it is until discharged by due course of law. *Crepps* v. *Durden*, *Cowp.* 640., was a conviction in four penalties, for exercising his ordinary calling of a baker on a *Sunday*. As there can be but one offence on the same day, it was held an excess of jurisdiction, for which an action would lie before the convictions were quashed. There the question immediately before the Court was, whether an objection could be made to the legality of a conviction before it was quashed, and it was held that it might. Upon these authorities, and the reason of the thing, we are obliged to pronounce that the commitment made in pursuance of the said adjudication in this case, as well as the adjudication itself, in respect to the imprisonment, being, in this particular, a clear excess of jurisdiction, was not warranted by law, and that the imprisonment thereunder was a trespass in the committing magistrates, for which this action is maintainable: which we cannot but regret, as the facts of the case would have authorised a commitment, if the warrant had been framed in a manner conformable to the powers of the magistrates under the statute. The consequence is, that the rule *nisi* for setting aside the verdict must be discharged.

50 G. 3. c. 49.

By stat. 50 *Geo.* 3. *c.* 49. (*a*) § 1. after reciting stat. 43 *Eliz.*

(*a*) For the remaining provisions of this statute, see *post*, page 260, &c.

c. 2. § 2. and stat. 17 *Geo.* 2. *c.* 38. § 1. and that two or more justices should be empowered to examine and correct and to allow and approve every such account, before the same shall be signed and attested, it is enacted, *that in all cases where any such account is required to be made and yielded, and to be signed and attested as aforesaid by virtue of the said last recited act, every such account shall be submitted by the churchwardens and overseers to two or more justices of the peace of the county, dwelling in or near the parish or place to which such account shall relate, at a special sessions for that purpose to be holden within the fourteen days appointed by the said last recited act for delivering in such account; and such justices shall and they are hereby authorised and empowered, if they shall so think fit, to examine into the matter of every such account, and to administer an oath or affirmation to such churchwardens and overseers of the truth of such account, and to disallow and strike out of every such account all such charges and payments as they shall deem to be unfounded, and to reduce such as they shall deem to be exorbitant, specifying upon or at the foot of such account every such charge or payment and its amount, so far as such justices shall disallow or reduce the same, and the cause for which the same is disallowed or reduced; and it shall be lawful for such two or more justices and they are hereby required to signify their allowance and approbation of any such account under their hands, and to sign and attest the caption of the same at the foot of such account, in manner directed by the said last recited act: And in case such churchwardens and overseers, or any of them, shall refuse or neglect to make and yield up or to submit such account, or to verify the same by oath as aforesaid, or to deliver over to their successors within ten days from the signing and attesting such accounts, any goods, chattels, or other things, which on the examination and allowance of such account in manner aforesaid shall appear to be remaining in the hands of such churchwardens or overseers, it shall and may be lawful for any two or more justices of the peace to commit him, her, or them, to the common gaol, until he, she, or they shall have made and yielded such account, and verified the same as aforesaid, or shall have delivered over such goods, chattels, and other things which shall appear to be so remaining in his, her, or their hands as aforesaid; and in case such churchwardens and overseers, or any of them, shall refuse or neglect to pay to their successors within fourteen days from the signing and attesting such account, any sum or sums of money or arrearages which on the examination and allowance of such account in manner aforesaid shall appear or be found to be due and owing from such churchwardens or overseers, or any of them, or remaining in their hands, it shall and may be lawful for the subsequent churchwardens and overseers by warrant from any two or more justices of the peace, to levy all such sum or sums of money by distress and sale of the offender's goods, rendering to the parties the overplus, and in default of such distress, it shall be lawful for any such two justices of the peace, to commit the offender or offenders to the common gaol of the county, there to remain without bail or mainprise, until payment of such sum or sums of money or arrearages as aforesaid.*

50 G. 3. c. 49.

Accounts of churchwardens and overseers of the poor to be submitted by them to two or more justices at a special sessions.

Justices may examine accounts, and disallow charges.

Penalty for neglect, &c.

Power of commitment.

Refusing to pay successors.

Distress.

Imprisonment.

Allowance of the Account.

County of ——— } *PERUSED and allowed, (having been first signed and verified on oath by* A. B. *and* C. D. *churchwardens, and* E. F. and G. H. *overseers of the poor) by me, one* [or, *us, two*] *of his majesty's justices of the peace in and for the said county, the ——— day of ——— one thousand eight hundred and ———.* J. P.

Churchwarden may be punished as an overseer: but in the commitment he must be called overseer.

Churchwardens.] *Rex* v. *Peake, M.* 15 *C.* 2. 1 *Keb.* 574. 1 *Bott.* 298. 2 *Nol. P. L.* 348. 3*d edit.* The churchwarden was committed for refusing to account for all monies received and disbursed by him, and of all such things as concerned his office. But upon an *habeas corpus* he was discharged; for if he be committed as overseer, it must be so expressed in the *mittimus,* although to be overseer be annexed to the office of churchwarden, for the justices have no power over him as churchwarden.

43 Eliz. c. 2. § 2. 17 G. 2. c. 38. § 1.

Shall account.] The subjects of this account are not only all monies received and paid by the parish officers, but likewise sums rated and assessed, but not received;—of all goods, chattels, stock, and materials in their hands or in those of any of the poor in order to be wrought and all other things concerning their office.

43 Eliz. c. 2. § 1.

They are entitled to charge whatever they have *bonâ fide* expended in providing work for the children of indigent parents, and for persons having no means of livelihood, in relieving those paupers who have claims upon the parish, and in the disposal of the stock raised for these purposes: indeed it has been said that they may credit themselves with any money expended for the good and on the business of the parish. (Per *Ashhurst* J. *Rex* v. *Micklefield, Cald.* 509.) Of course they are entitled to charge whatever they have paid under the direction of a statute, or under any order upon them or other legal process, as under stats. 51 *Geo.* 3. *c.* 79., 52 *Geo.* 3. *c.* 160., &c. or for costs of maintenance removal, or appeal. (Vide *ante, Rex* v. *Inh. of Essex,* p. 45.) But it is not decided that the expences of a lawsuit, incurred by the officers without consulting the vestry, are chargeable in the account, unless perhaps where the emergency of the occasion allows no time for that precaution. In order to obtain the allowance of law expences, the overseers must not have misconducted themselves in contracting them. In some instances the statutes which direct the expenditure of money, authorise the overseers in express terms to charge it in their accounts: such are the enactments of stats. 2 & 3 *Ann. c.* 6. § 2.; 17 *Geo.* 2. *c.* 5. § 1.; 18 *Geo.* 3. *c.* 19. § 4. and 22 *Geo.* 3. *c.* 83. § 8.

No expences of their own will be allowed to the overseers beyond what are barely necessary. *Rex* v. *Lord Ashburnham,* 2 *Nol. P. L.* 346. 3*d edit.* They were formerly without the power to charge a salary for an *assistant,* even though under the sanction of the vestry; *Rex* v. *Welch and others,* 1 *Bott,* 312.; but this item

59 G. 3. c. 12.

is now authorized by stat. 59 *Geo.* 3. *c.* 12. § 7. It is still, however, unallowable to charge a salary for their own services. *Rex* v. *Glyde,* 2 *M. & S.* 323. *post,* p. 257.

When the overseers have advanced money for the good and on

the business of the parish, they may reimburse themselves out of any subsequent rate made by them during their year; but although the money has been advanced for allowable law charges, or any other legitimate expence not forming an item of immediate relief to the poor, the rate, except in cases permitted by statute, as in the instance of workhouses under stat. 59 *Geo.* 3. *c.* 12. § 8, 9, 10. 14, 15, 16. must not be specified to be for the repayment of the sums laid out, but for the relief of the poor; the general statute 43 *Eliz.* not authorizing any rate to be expressly made for any other purpose. *Rex* v. *Wavell and others*, 1 *Dougl.* 116. 1 *Bott*, 102. *Tawney's case*, 1 *Bott*, 102. *n.*, *and cases there cited. Rex* v. *The Mayor of Gloucester*, 1 *Bott*, 103. 5 *T. R.* 346., and see *Rex* v. *Micklefield*, *Caldec.* 507. 1 *Bott*, 103. If, on an appeal concerning the accounts, it be seen that, at the end of the year, one officer is out of pocket, while the other has a surplus in his hands, the sessions may direct the payment of the one's deficiency from the other's superfluity; and so, although each officer acted for his own township, if those townships maintain their poor collectively. *Rex* v. *Limehouse*, *E.* 1 *Geo.* 1. *Fol.* 22. 1 *Bott*, 310. 59 G. 3. c. 12.

Formerly, if an overseer neglected to pay himself while he continued in office, he lost whatever he had advanced; and even where he remained in office several successive years, he could not repay himself by a rate in one year what he had advanced in a year preceding, but was obliged to make up the account of each year, with reference only to that year's items. *Rex* v. *Goodcheap*, 6 *T. R.* 159. 1 *Bott*, 301. Still less could he or his executors claim any repayment from his successors even though the vestry consented. And the reason was that otherwise, as the inhabitants of a parish are a fluctuating body, the present inhabitants would be burthened with the expences of the former. *Tawney's case*, *Rex* v. *Chichester*, *Rex* v. *Llandillo*, *and the other cases in* 1 *Bott*, 102. *n. Rex* v. *Ware*, *Fol.* 10. 10 *Mod*, 104. *Rex* v. *Goodcheap*, *supra.* R. v. Goodcheap.

Still, however, by stat. 17 *Geo.* 2. *c.* 38. § 11. The succeeding overseers by levying and getting in the arrears of any rate which their predecessors made, but from refusal or neglect of the party rated were unable to get in, might, and still may, reimburse the advances of those predecessors to the extent of the arrears so got in. And now by stat. 41 *Geo.* 3. (*G. B.*) *c.* 23. § 9. it is made lawful to reimburse all sums which the preceding officers may have advanced during a time when no rate has been made, or where an appeal has been depending by which the whole rate might be affected. So that, unless the non-payment of the rate have arisen from the remissness of the officers themselves, (which being no neglect or refusal of the party rated, comes not within stat. 17 *Geo.* 2. *c.* 38. § 11.) or unless the officers, having made and collected the rate, have been imprudent enough to assess it too low, in which event the relief given by stat. 41 *Geo.* 3. (*G. B.*) *c.* 23. § 9. would not be applicable, the proper advances made by parish officers seem now secured to them, notwithstanding any accident by which they may have been prevented from repaying themselves during their year. 17 G. 2. c. 38. 41 G. 3. (G. B. c. 23.

The manner of preparing the account is thus pointed out by stat. 17 *Geo.* 2. *c.* 38. § 1. It shall be in writing, fairly entered in a 17 G. 2. c. 38

17 G. 2. c. 38. book or books to be kept for that purpose and signed by the officers. In the cases before this statute a vague mode of settling seems to have been tolerated; but the statute now requires the account to specify all sums of money either received, or rated and assessed without having been received, and all goods, chattels, stock, and materials in the hands of the officers, or of the poor to be wrought, of all monies which the officers have paid and all other things concerning their said office. *Walrond's case*, 1 *Bott*, 300. *Rex* v. *Corrocke*, 1 *Bott*, 299.

The time allowed by stat. 17 *Geo.* 2. *c.* 38. § 1. for rendering this account is fourteen days from the nomination of the successors. Until the expiration of that fortnight, the parish has no right to call for an adjustment, unless where an officer leaves the district, in which case he is required by the same stat. § 3. to deliver his account to some other churchwarden or overseer; or where he dies, in which case his executors or administrators are by the same section commanded to deliver over all things concerning his office to some other churchwarden or overseers within 40 days after his decease. See *Rex* v. *Tucker*, p. 253, 254.

The account at the end of the year shall be delivered by the churchwardens and overseers to their successors within fourteen days after such successors shall have been nominated. This de-
50 G. 3. c. 49. livery is not dispensed with by stat. 50 *Geo.* 3. *c.* 49. § 1. The old churchwardens and overseers shall submit the account to two or more justices of the county at a special sessions to be holden for that purpose within the fourteen days from the nomination of the succeeding officers; and such justices may examine the matter of such account, and administer an oath or affirmation to the officers of its truth, and disallow such charges and payments as they shall deem unfounded, and reduce such as they shall deem exorbitant, specifying, upon, or at the foot of, such account, every such charge or payment and its amount, so far as they shall disallow or reduce it, and the cause of disallowance or reduction, and they shall signify their allowance and approbation under their hands, and sign and attest the caption at the foot of the account without fee or reward. *Lester's case*, 16 *East*, 374.

This provision by § 6. is restrained from affecting parish officers exempted under local acts from rendering such accounts. No justices can commit a man for not accounting before them, if he have accounted before any other magistrates similarly authorized. 2 *Nol. P. L.* 347. *3d edit.* Indeed, when accounts have been laid before one set of justices, no other justices can meddle, either spontaneously, or by delegation, to allow or disallow them, unless where the Court of K. B., the matter being brought before it, thinks proper to put the accounts into the hands of less partial magistrates. *Rex* v. *Turner*, 1 *Bott*, 299. Even the sessions have no authority to interfere in the original allowance; their jurisdiction is only appellate. *Rex* v. *Townsend*, 1 *Bott*, 304. *Rex* v. *Bartlett*, 1 *Bott*, 322. When a parish extends into more counties
43 Eliz. c. 2. than one, or lies partly within and partly without the liberties of any corporate place, the officers of such a parish shall make one account before the head officer of the place corporate, and one other before the justices of the county.

When the account is thus passed, it remains for the officers

to deliver over to their successors, "all sums of money, goods, chattels and other things, as shall be in their hands." The money in their hands, or owing from them, they have fourteen days for paying; the goods, chattels, or other things, they must deliver over within ten days. The order of the vestry will not justify them in retaining any part of the balance, even for parochial payments; for the statute is imperative as to the payment over; and the vestry cannot dispense with the statute. *Rex* v. *Justices of Somersetshire*, 1 *Bott*, 311. Besides, these payments may as regularly be fulfilled by their successors, when the means are transferred into their hands. For compelling payment of this balance an order may be made, as it seems, by two justices; but not by the quarter sessions, except upon appeal. *Rex* v. *Topsham*, 1 *Bott*, 722. *Rex* v. *Whitear*, 1 *Bott*, 308. *Rex* v. *Bartlett*, 1 *Bott*, 322. That order should be on all the officers of the year to be accounted for; and if it be an order on the officers of the year before the last, it may direct them to pay to the present overseers omitting those of the intermediate year. If, on an appeal respecting the accounts, no order have been made by the sessions to pay the balance, two justices out of sessions may enforce that payment, for the balances are as much arrears then, as before the appeal, only the quantum is ascertained. *Rex* v. *Bartlett*, 1 *Bott*, 322. *Rex* v. *Carter*, 1 *Bott*, 314.

43 Eliz. c. 2. § 2. 17 G. 2. c. 38. § 1. 50 G. 3. c. 99. § 1.

§ 6. The new officers having received the book or books containing the account, they or one of them must keep such book or books in some public place; and shall permit any person there assessed or liable to be assessed to inspect the same at all reasonable times for the fee of 6*d*, and on demand shall give copies thereof, or of any part thereof to such person, at the rate of 6*d*. for every 300 words, and in proportion for any greater or less number. Where there is a vestry, within a parish or in a township, that assembly may direct in what custody the account shall be kept. See *ante*, p. 210.

17 G. 2. c. 38. 58 G. 3. c. 69.

Such money as shall be in their hands, shall pay and deliver over to their successors] *Rex* v. *The Justices of Somersetshire*, *M*. 8 *Geo*. 2. 2 *Stra*. 992. 1 *Bott*, 311. 2 *Nol*. *P*. *L*. 357. 3*d ed*. *Mandamus* to the justices, to grant a warrant for levying 30*l*. 17*s*. 11*d*., being the balance of the last overseer's account in their hands. They return, that true it is there was such a balance, but that the vestry had ordered them to retain it, and employ an attorney to sue for some charity money, and get it laid out for the benefit of the poor; that one *Young* was so employed, and the balance exhausted in fees, and that the overseers had engaged to pay *Young*; and for that cause they had refused to grant the warrant. But by the Court: there must go a peremptory *mandamus*; for the statute says, the balance shall be paid over to the new overseers, under a penalty; and it is not in the power of the vestry to dispense with the statute.

Balance must be paid over,

Overseers becoming Bankrupts.

Rex v. *Tucker*, *M*. 57 *G*. 3. 5 *M*. & *S*. 508. *Tucker*, one of the late overseers of the poor of the parish of *Harberton*, in the county of *Devon*, was committed by two justices to the

An overseer of the poor is discharged by his bankruptcy and

R. v. Tucker.

certificate from a debt due in respect of a sum of money in his hands, as overseer at the time of his bankruptcy, although this happen before the expiration of his year of office, before which time he cannot be compelled to account.

county gaol, until he should give in and verify his accounts as such overseer, and pay and yield up the monies due to the said parish. The case was this: *Tucker* and another were appointed overseers from *Lady-day*, 1815, to *Lady-day*, 1816, and took on them the said office; and *Tucker* received on account of the parish between *Lady-day*, 1815, and the end of *January*, 1816, 952*l.* 4*s.* 6*d.*, out of which he disbursed 770*l.* 15*s.* 3*d.*, leaving a balance in his hands of 181*l.* 8*s.* 10*d.* On the 6th of *February*, 1816, a commission of bankruptcy issued against him, and he was declared bankrupt, and accounted under the commission for the balance, but having before the commission, absconded from his house, the account books in his hands, as overseer, were taken away from his house by the churchwardens and overseer. At *Lady-day*, 1816, new overseers having been appointed, *Tucker* was summoned to attend, and did attend a vestry meeting, and there made up his accounts by checking them with the account books in the hands of the overseers; from which it appeared, that the above balance was due from him to the parish before he became bankrupt, and he offered to verify the account on oath. Afterwards he obtained his certificate; notwithstanding which the justices, upon the complaint of one of the overseers, that *Tucker* had not made and given in his account, and yielded up the monies and things claimed by the parish to them, the succeeding overseers, issued their warrant, under which he was carried before them, and committed as above, though he represented to them what had passed, and that he had always been, and was then ready, to verify his account on oath; and that, having obtained his certificate, he was not personally liable. And upon a rule *nisi* for a *habeas corpus* to discharge *Tucker* out of custody as to this commitment, the doubt was, if his bankruptcy and certificate discharged the debt. — *Nolan*, who shewed cause, relied on *Rex* v. *Eggington*, ● *T. R.* 369., which, however, he admitted, had not been approved of in *Ex parte Exleigh*, 6 *Ves. Jun.* 811. But he argued, that an overseer is not like a mere trustee; he is indictable if he does not account and pay over the balance, (*Rex* v. *King*, 2 *Str.* 1268. *Rex* v. *Commins*, 5 *Mod.* 179), though he cannot be called on to bring in his account until the year expires. *Rex* v. *Gibson*, *Fol.* 20. Now, at the time of the defendant's bankruptcy, there was not any debt due from him as overseer for which he could be sued, nor any one to whom he could pay it until his successors were appointed; consequently, this is not a debt proveable under the commission within the statutes of bankrupt. — *Sed per Curiam.* The money in his hands at the time of the bankruptcy was *debitum in præsenti*, although he might only be accountable for it *in futuro*. — *Gifford*, who was in support of the rule, said, that it had been held, with respect to the land-tax collectors, that any of the parishioners might prove. — R. A. upon the defendant's verifying his account, and undertaking not to bring any action.

Two justices may enforce payment of the balance after appeal, though the sessions did

Rex v. *Sir J. Carter and others*, *E.* 31 *Geo.* 3. 4 *T. R.* 246. 1 *Bott*, 314. 2 *Nol. P. L.* 356. 367. *3d edit.* On an appeal against the allowance of the accounts of Mr. *Read*, an overseer of *Fareham*, *Southampton*, the sessions disallowed several items in the account, amounting in the whole to 42*l.* 7*s.* 1*d.*; but the order of sessions

did not proceed to direct Mr. *Read* to pay that sum over to the succeeding overseers. On Mr. *Read's* subsequent refusal to pay over this sum, an application was made to two of the defendants as magistrates, desiring them to enforce payment under stats. 43 *El. c.* 2. § 2. 4. and 17 *Geo.* 2. *c.* 38. § 3.; but they conceiving they had no authority to act, declined: whereupon a rule was obtained requiring them to shew cause why a *mandamus* should not issue to compel them, or any two of them, to receive and proceed on the complaint against Mr. *Read,* for refusing to pay over the balance in his hands. And on their part it was contended, that the magistrates had no jurisdiction, as this case had been before the sessions, who had made a judicial order upon the subject. Stat. 43 *El. c.* 2. § 2. 4. directs the overseers to pay over the balance in their hands to their successors in four days; and in default thereof enables two magistrates to levy the sum due by distress and sale of the offenders goods, or to commit him to prison. Stat. 17 *Geo.* 2. *c.* 38. § 3. only enlarges the time of paying the balance to fourteen days; giving the justices the same power to commit the defaulters to prison, and omitting the levying the balance by distress and sale. And under both statutes an appeal to the sessions is given against the allowance of the accounts. But the power of the magistrates is confined to cases where there is no appeal. Here the prosecutor chose to appeal to the sessions: and therefore he should pursue that remedy by sessions process. And these magistrates, acting out of sessions, have no power under either of these statutes to compel the payment of the balance of this account. — Ld. *Kenyon* C. J. It seems to me that these Justices have jurisdiction in this case. The effect of the appeal was the ascertaining the *quantum* of the arrears; and then the statute attaches, and enables the magistrates out of sessions to enforce the payment of the balance. — *Grose* J. (Absent *Ashhurst* and *Buller* Js.) These are as much arrears now as they were before the appeal; only the *quantum* is ascertained. Rule absolute.

not make any order for payment.

Reg. v. *Hedges, M.* 4 *Ann.* 2 *Salk.* 533. 1 *Bott,* 304. 2 *Nol. P. L.* 350. 353. 365. 3*d ed.* On appeal upon the stat. of 43 *El.* against the allowance of the account by two justices, the sessions ordered the overseer to pay so much over, which they adjudged to be in his hands; and for not doing this, they committed him. But by the Court: they should have levied the arrears by distress and sale, and in default of distress have committed him; for the sessions must execute their judgment, in the same manner as the two justices must do.

Balance to be levied by distress, payment having been ordered by sessions on appeal.

Reg. v. *Turner, E.* 9 *An.* 1 *Bott,* 310. 2 *Nol. P. L.* 353. 3*d ed.* If accounts are adjusted, and the overseers refuse to pay the balance, they cannot be committed immediately, but a warrant must issue to distrain upon them; and upon the return thereof there may be a commitment.

For non-payment of balance, there must be distress before commitment.

Case of the *Borough of Banbury, M.* 2 *Jac.* 2. 1 *Bott,* 309. Where four towns lie in one parish, having each an overseer, and there being one rate for the whole four, each overseer collecting that of his respective town, and the inhabitants of each being respectively assessed by their respective overseers, the justices may order a *distribution,* where there is a want of money in some and a surplusage in others.

Where a balance may be ordered to be distributed.

Re-payment of balance.

So in *Rex* v. *Churchwardens of Topsham*, 1 *Bott*, 310. It was held the justices might order payment of the balance to the succeeding overseers.

One overseer reimbursing another.

And in *Rex* v. *Limehouse*, *E.* 1 *Geo.* 1. 1 *Bott*, 310. 2 *Nol. P. L.* 358. *3d edit.* That one overseer should reimburse another where the one had a surplusage, and the other was money out of pocket.

Commitment until they account.

Until he have made a true account.] *The Mayor* v. *Churchwardens of Northampton*, *Carth.* 152. 1 *Bott*, 298. 2 *Nol. P. L.* 349. *3d edit.* The mayor committed the churchwardens, as overseers of the poor, for refusing to account: and the warrant of commitment concluded, *until they be duly discharged according to law.* The Court held the commitment void: because the warrant ought to conclude, *there to remain until they shall account*, as the statute doth appoint. And the difference is, where a man is committed as a criminal, and where only for contumacy: for in the first case, the commitment must be until discharged according to law; but in the latter, until he comply and perform the thing required; for in that case, he shall not lie till a sessions, but shall be discharged upon performance of his duty. See Vol. I. *tit.* Commitment.

Justice refusing to swear an overseer to his account.

Which account shall be verified by oath before one justice] *Rex* v. *the Justices of Middlesex*, *H.* 19 *Geo.* 2. 1 *Wils.* 125. 1 *Bott*, 300. 2 *Nol. P. L.* 351. *3d edit.* A *mandamus* was moved for, to be directed to the justices to swear *William Carr*, late overseer of the poor of the parishes of *St. Andrew* and *St. George the Martyr*, to the truth of his account, upon an affidavit made by *Carr* that he had delivered in an account to the justices, and was ready to swear to the truth thereof, but that they had refused to swear him. On behalf of the justices, it was objected, that the account consisted of gross sums, and that the justices asked him some questions touching the particulars, which he refused to answer, and therefore they refused to swear him to his account, By the Court: a *mandamus* is a matter of course, and we cannot refuse to grant it. If the justices have any legal objection, they may return it upon the *mandamus*. And if any person think himself aggrieved by the account, he may have his remedy by appeal.

Books to be delivered to the new overseers.

And the said books shall be preserved by the churchwardens and overseers] *Rex* v. *Clapham*, *T.* 24 & 25 *Geo.* 2. 1 *Wils.* 305. 1 *Bott*, 301. 2 *Nol. P. L.* 359. *3d ed.* A *mandamus* was granted to oblige the old overseer to deliver over the books of the poor rates to the new overseer; for, by the Court, they are public books, and ought to be delivered over by one overseer to another, that all the parishioners may have access to them, and the overseer and churchwarden for the time being ought to have the custody thereof.

The court of K. B. will not, upon removal of an order of sessions allowing overseers' accounts, which is good upon the face of it,

Rex v. *James and Others*, *H.* 54 *G.* 3. 2 *M. & S.* 321. *Bott*, *Cont.* 55. A rule *nisi* was obtained in the last term for quashing an order of sessions, allowing the accounts of the overseers of the poor of the parish of *Croydon*, in the county of *Surrey*, upon appeal against them by the defendants at the last midsummer-sessions. The order of sessions was upon the face of it general, allowing the said accounts, and dismissing the appeal and farther ordering that the appellants should pay to the overseers 40*s.* costs

The defendants, in their affidavit, on which the rule was obtained, disclosed several grounds of objection to these accounts: 1*st*, that they contained charges of sums in gross as monthly payments, without stating the several items of expenditure which made up the gross amount, some of which items were stated to be for charges illegal or excessive: 2*ndly*, that they contained a charge for a salary to one of the overseers, &c. And now the rule coming on, Ld. *Ellenborough* C. J. interposed by enquiring if there was any objection to the order upon the face of it; for otherwise the court would not go into the overseer's accounts upon affidavit. The sessions was the proper forum for deciding such matters; the time of the court would otherwise be absorbed in taking parish accounts. The *Attorney General* and *Lawes*, in support of the rule, admitted the inconvenience that would follow from entertaining motions to revise the overseers' accounts, if the practice were general; but urged on the other hand, the great injustice that might be done if there was no relief against accounts so made up as the present, without specifying any particulars. And they referred to *Rex* v. *Battel*, a recent case, where they said the Court had granted relief against the overseers' accounts, upon a rule obtained upon affidavit that they contained a charge for an allowance paid to the overseer.—Ld. *Ellenborough* C. J. said, if there is likely to be a defect of justice the remedy must be by application to the legislature; for the Court cannot enlarge the limits of its jurisdiction in order to supply a remedy; the sessions have jurisdiction over these matters; if, on the removal of the record by *certiorari*, it had appeared to be erroneous, this Court would then have acted upon it. Rule discharged.

Rex v. James and others.

go into the merits of those accounts upon affidavit.

The following is presumed to be alluded to in argument, in the above case under the title of *Rex* v. *Battel. H.* 1813. 2 *M.* & *S.* 323. The rule for the *certiorari* was obtained upon an affidavit as stated, but the case as it appears, was decided upon objections apparent on the face of the order.

Rex v. Battel.

Rex v. *Glyde, H.* 53 *Geo.* 3. 2 *M.* & *S.* 323. *n. Bott, Cont.* 55. Upon a rule to shew cause why an order of sessions confirming the accounts of *John Hilder* and others, late churchwardens and overseers of the poor of the parish of *Salehurst*, in the county of *Sussex*, should not be quashed, the order in question appeared to be as follows: Upon the appeal of *G.* against the accounts of *H.* and *W.*, overseers, whereby he the said *G.* objected to the sum of 12*l.* 10*s.* in the said accounts paid to *W.* as a salary, it is ordered that the said accounts be confirmed.—After argument, Ld. *Ellenborough* C. J. said, this rule may be enlarged, subject to a case to be stated as to what the grounds for the allowance were, that we may ascertain that the salary was not meant as a pension to the overseer, which the law will not allow. We have no doubt on the face of the order that he has no title to a salary for any meritorious services, or for any services at all; but we would wish to relieve the parties if it has been paid in reality for the maintenance and keeping of the poor. Perhaps the best way will be to quash the order, and remit the case to the sessions to re-hear the appeal. The other judges concurred. Order of sessions quashed.

Overseers cannot charge in their accounts for money paid as a salary to one of the overseers.

(2.) Of Appeal against the Overseers' Accounts.

43 El. c. 2. Appeal against the account.

By stat. 43 *Eliz. c.* 2. § 6. If any person shall find himself aggrieved by any act done by the said overseers or justices, he may appeal to the general or quarter sessions, whose order therein shall bind all parties.

17 G. 2. c. 38.

And by stat. 17 *Geo.* 2. *c.* 38. § 4. If any person shall have any material objection to such account, or any part thereof, he may, giving reasonable notice to the churchwardens and overseers, appeal to the next sessions; but if reasonable notice was not given, then they shall adjourn the appeal to the next sessions; and the court may order and award to the party for whom the appeal shall be determined reasonable costs, as in cases of settlement by stat. 8 & 9 *W.* 3. *c.* 30.

Corporations, &c.

And by § 5. In all corporations or franchises, which have not four justices, persons aggrieved may appeal, if they think fit, to the next county sessions. See stats. 41 *Geo.* 3. (*G. B.*) *c.* 23. § 1. and 1 *Geo.* 4. *c.* 36. *ante.*

An appeal against overseers' accounts must be to the next general quarter sessions after the allowance of the accounts. The 17 G. 2. c. 38. § 4. is, in this respect, a repeal of the 43 El. c. 2. § 6.

Rex v. *The Justices of Worcestershire, M.* 57 *Geo.* 3. 5 *M. & S.* 457. The overseers' accounts for the parish of *Elmley Lovett*, for the years 1814 and 1815, were allowed by two justices, on the 31st *March*, 1815. Notice of appeal against the same was given for the sessions to be holden on the 23d of *April*, 1816, at which sessions an appeal was entered; but the Court refused to enter upon the merits, or to hear the appeal, on the ground that it came too late. And the question was, whether the appeal ought to have been to the general quarter sessions next after the allowance of the accounts. A rule *nisi* having been obtained for a *mandamus* to the justices to receive the appeal, *Shutt*, who shewed cause, contended, that the 17 *Geo.* 2. *c.* 38. § 4., which required that the appeal should be made to the next sessions, was a virtual repeal of the 43 *Eliz. c.* 2. § 6., which gave an appeal generally. And he said, that although regularly an affirmative statute shall not repeal a precedent affirmative law, yet it is otherwise if the subsequent statute contain matter contrary to the former. (*Dr. Foster's Case*, 11 *Rep.* 63. *a.*) As, if a former act says, that a juror upon such a trial shall have 20*l.* a-year, and a new statute enacts that he shall have 20 marks; here the latter statute, though it doth not express, yet it necessarily implies a negative, and virtually repeals the former. (*Jenk.* 2. 73.) So, though the 43 *Eliz.* has imposed no limitation as to the time of appealing, yet the 17 *Geo.* 2. enacts, that the appeal should be to the next general or quarter sessions. This latter act, therefore, hath abrogated the former, because they are contrary in matter. And, therefore, it has been adjudged that an appeal against a poor-rate must, in all cases, be to the next sessions. (*Rex* v. *Coode, Cald.* 464. 1 *Bott*, 281. *Rex* v. *Micklefield, Cald.* 507. 1 *Bott*, 284. *Rex* v. *Atkins*, 4 *T. R.* 12. *Rex* v. *Just. of London*, 15 *East*, 632.) It would be a strange construction, then, of these acts, if the very same words in the same two clauses were to bear a different sense with respect to overseers' accounts from that which has been given to them with respect to poor-rates. The case of *Rex* v. *Earl of Ashburnham* (2 *Nol. P. L.* 360. *notis.*) is the only

authority for such a construction, but that has never yet been recognised. *Peake* and *Puller, contrà*, relied principally upon *Rex* v. *Lord Ashburnham*, giving as a reason why its authority could not have been recognised, that it had but lately appeared in print. And they said, that *Rex* v. *Coode* regarded only appeals against a poor-rate; whereas the other was an express decision upon the point; and in *Rex* v. *Justices of Dorsetshire* (15 *East*, 200.) the Court considered it as by no means settled, that the 17 *Geo.* 2. had, in this respect, repealed the 43 *Eliz.* Although it may be difficult to make a distinction between the two cases, yet it may be observed, that to limit an appeal to the next sessions against overseers' accounts, where, perhaps, the matters of account are voluminous and complicated, might be productive of great inconvenience; for it might be impossible, within so short a period, to unravel the account and detect fraud. Lord *Ellenborough* C.J. In *Rex* v. *Coode*, the case of *Rex* v. *Lord Asburnham* was brought under the consideration of the Court, and yet they came to a decision directly contrary to it; and where good sense and convenience are all on one side, one is almost led to regret that Serjt. *Kerby*'s note of that case ever got into print. The plain meaning of the 17 *Geo.* 2., in enacting "that it shall be lawful to appeal to the *next* sessions," where, by a pre-existing act, the appeal was without limitation of time, is to negative the power of appealing to any but the *next*. In *Rex* v. *Coode*, Lord *Mansfield* was of opinion that the 17 *Geo.* 2. did confine the appeal, and the Court agreed that they must decide that the statute had repealed the 43 *Eliz.* in this particular. I feel no inclination to disturb that decision, considering how much the public convenience is in its favour. I know not to what difficulties persons whose property is liable, and those who are bound to account, might be reduced, if we were to adopt a different construction. With respect to the objection, that the time may be too short to prepare for the appeal, if, upon any occasion, this should be made appear, the appeal may be lodged, and adjourned on a proper application. — *Bayley* J. I think that the affirmative words of the 17 *Geo.* 2. must be taken to imply a negative. If the statute had been silent as to the time of appeal, the 43 *Eliz.* would have attached; and it would have been open to the party to appeal at any time. But as the statute empowers the party to appeal to the next sessions, I think it virtually implies that he must appeal to those sessions, and to no other. — *Abbott* J. I agree that this rule must be discharged. The construction put on these statutes by my Lord and my brother *Bayley* appears to be the true construction, conformably to the rule for the construction of acts of parliament so well laid down in the old cases, and adopted in *Rex* v. *Coode*. R. D. (*a*)

Rex v. The Justices of Worcestershire.

(*a*) Holroyd J. had left the Court.

Rex v. *Bartlett*, *T.* 7 *Geo.* 2. 2 *Str.* 983. 1 *Bott*, 306. 2 *Nol. P. L.* 360. 365. 3*d ed.* An order made at the sessions relating to accounts of overseers, was moved to be quashed, because it did not appear that the accounts had been before the justices out of sessions, and they cannot come *per saltum* to the sessions. On the other side it was said, that it appeared there was an allowance, for the appeal is said to be against the disbursements *and the allowance thereof*, which the Court will presume was regular. — But by the Court: It doth not follow, that this was an allowance

Rex v. Bartlett.

Accounts must appear to have been allowed by the justices before the appeal.

by two justices, for the parish might do it; and therefore, for want of jurisdiction this order must be quashed.

50 G. 3. c. 49. Churchwardens, &c. may appeal to quarter sessions.

Stat. 50 *Geo.* 3. *c.* 49. § 2. *Provides, that if such churchwardens or overseers,* (as in this act are mentioned, *vide ante,*) *or any of them shall feel themselves, himself, or herself aggrieved by the disallowance or reduction of any such charges or payments, and be desirous of appealing against any order in that respect made by any such two or more justices of the peace, it shall and may be lawful for him, her, or them, to enter an appeal against such order, at the next general or quarter sessions to be holden next after the tenth day from the making of such order, he, she, or they having first paid or delivered over to the succeeding churchwardens and overseers such sum and sums of money, goods, chattels, and other things, as on the face of the account which shall have been submitted by him, her, or them, to such two or more justices in manner aforesaid shall appear and be admitted to be due and owing from him, her, or them, or remaining in his, her, or their hands, and having also entered into a recognizance before one or more such justice or justices, with two sufficient securities to be approved of by such justice or justices before whom such recognizance shall be acknowledged, in not less than double the sum or value in dispute, to enter such appeal at such next general or quarter sessions, and abide by such order as shall at that or any subsequent sessions be made on such appeal; and it shall and may be lawful for the justices of the peace assembled at such general or quarter sessions, on proof of the matters aforesaid, and on the production of such recognizance and proof of the same having been duly entered into, to adjourn such appeal if they shall see occasion, or to hear the same, and to examine into and to confirm or reverse such disallowance or reduction in the whole or in part, as to such justices at such sessions shall seem just; and in any such case the said justices at such sessons may (if they shall think fit) make an order that such churchwardens and overseers shall have the costs by them incurred upon any such appeal, defrayed out of the poor rates of the parish or place; and the order of the general quarter sessions in execution of the powers given to them by this act shall be binding on all parties.*

Power to adjourn.

Costs.

Appeal by any other person not taken away.

§ 3. *Provides, that nothing herein contained shall take away or be construed to take away any power of appeal against any such account, by any other person entitled to appeal against the same by virtue of the said recited acts or either of them;* [*viz.* 43 *El. c.* 2. *and* 17 *Geo.* 2. *c.* 38.]

Magistrates of corporations shall have the same jurisdiction as two or more justices.

§ 4. *Enacts, "that every mayor, bailiff, or other head officer of every town and place corporate and city in* Great Britain, *or any two magistrates of such town or place corporate or city, being justice or justices of the peace respectively, shall have the same authority by virtue of this act within the limits and precincts of their jurisdictions as is by this act limited, prescribed or appointed to justices of the peace of the county, or any two or more of them for the execution of this act; subject nevertheless to an appeal to the general or quarter sessions in every such town or place corporate or city respectively as aforesaid: provided always, that in any town or place corporate, or city, where there are not four justices of the peace, it shall and may be lawful for any person or persons where an appeal is given by this act, to appeal, if he or they shall think fit, to the next general or quarter sessions of the peace for the county, riding, or division wherein such town or place corporate or city is situate."*

§ 5. *Enacts, that no* certiorari *shall be granted to remove any order or proceeding of any general or quarter sessions, or of any justices, made or had under this act, into any superior court of record: but that all orders and proceedings of such sessions, and all orders and proceedings of such justices (subject to such appeal as aforesaid) under this act, shall be final and conclusive to all intents and purposes.*

50 G. 3. c. 49.

Proceedings of quarter sessions final.

§ 6. *Provides, "that nothing in this act contained shall extend or apply, or be construed to extend or apply to the accounts of any churchwarden or overseer of the poor in any parish or place where, by the provisions of any act or acts relating to the poor of such parish or place, or by the construction of any such act or acts, such churchwardens and overseers are exempted from the rendering the accounts required by the herein-before recited acts of the 43d year of the reign of her late majesty queen* Elizabeth, *and of the 17th year of the reign of his late majesty king* George *the second, or either of them; any thing herein-before contained to the contrary notwithstanding: provided also, that nothing in this act contained shall extend or be construed to extend to the city of* London.

Not to extend to churchwardens, &c. exempted from accounting under the recited acts.

Nor to the city of London.

§ 7. Provides also, that nothing in this act contained shall alter or repeal any of the provisions or regulations contained in the said recited acts, or either of them, other than and except only such provisions or regulations as are expressly mentioned in this act, and so far as the same are expressly amended or altered by this act.

Recited acts unless where it is hereby expressly mentioned not be affected.

Stat. 50 *Geo.* 3. *c.* 49. § 5. (to prevent the orders and proceedings of justices from being removed by *certiorari*), only applies to appeals brought by churchwardens and overseers, against the disallowance of any items in their accounts by the magistrates; leaving appeals by other persons as they stood under the prior act, 17 *Geo.* 2. *c.* 38. § 4. *Rex* v. *Bird and Others, E.* 59 *Geo.* 3. 2 *B. & A.* 522.

Rex v. *The Justices of Dorsetshire, H.* 52 *Geo.* 3. 15 *East,* 200. *Bott, Cont.* 53. 2 *Nol. P. L.* 364. 3*d edit.* A rule was obtained in *M. T.* last, calling upon the defendants to shew cause why a writ of *mandamus* should not issue, commanding them to cause continuances to be entered to the then next general quarter sessions, upon the appeal of *Charles Bowles*, against the allowance of the account of *William Goddard*, as overseer of the poor of the parish of the *Holy Trinity* in *Shaftesbury*, and at such sessions to hear and determine the matter of the said appeal.—This rule was obtained on the affidavit of *Bowles*, which stated the appointment of *Goddard* and *Baker* as overseers in 1810; that soon after the 7th of *May*, 1811, when they ceased to be overseers, the account of *Goddard*'s receipts and payments as overseer, was submitted to the magistrates of the borough of *Shaftesbury* at their special sessions holden for the purpose, for their allowance of the same, when *Bowles* objected to certain items in that account, and stated, that if they were allowed, he should appeal against the allowance; and thereupon the justices refused the allowance of the said account, but did not strike out the items objected to, alleging that the stat. 50 *Geo.* 3. *c.* 49. was not imperative upon them, but only authorised them to examine the accounts of overseers if they thought proper: That on the 8th of *July* last, and not before, the said account was verified on the oath of *Goddard* before two magistrates of the borough, and by them allowed;

Where overseers' accounts were not allowed till the last day, that an effectual notice of appeal to the then next sessions could have been given, and it did not appear when the party objecting had notice of such allowance: held, that a notice of appeal to the next subsequent sessions for which an effectual notice of appeal could be given, was good.

Rex v. The Justices of Dorsetshire.

and that the said 8th of *July* was the last day permitted by the practice of the sessions, for giving notice of appeals to the then next sessions, which were holden in the same month of *July;* and that the items objected to, still remaining in the account, *Bowles* gave notice of appeal against such account and allowance to the next subsequent sessions holden on the 8th of *October*, at which sessions, the justices conceiving the deponent ought to have appealed at the former sessions, dismissed the appeal on that account. The Court took time to look into the case of *Rex* v. Ld. *Ashburnham*, 2 *Nol. P. L.* 360. 3*d edit.* and afterwards *per* Ld. *Ellenborough* C. J. It seems to the Court that in every view of the case the *mandamus* should go, whether this be a proceeding under the stat. 43 *Eliz.* or under the stat. 17 *Geo.* 2.; for supposing it to be under the stat. 17 *Geo.* 2. and supposing that statute in this respect to have repealed the stat. 43 *Eliz.* (which from the cases cited, seems by no means to be settled,) still under the circumstances of this case, we think the *July* sessions could not be considered the *next* sessions for the purpose of appealing; for the allowance by the justices was on the 8th of *July*, the last day when any effectual notice of appeal could have been given; and it does not appear when the appellant had any notice of such allowance; and the transaction seems to carry with it marks of design to defeat the appeal. — *Mandamus* granted.

54 G. 3. c. 170. Inhabitants not to be incompetent witnesses in certain cases on behalf of or against their parishes.

By stat. 54 *Geo.* 3. *c.* 170. § 9. No inhabitant or person rated or liable to be rated to any rates or cesses of any district, parish, township, or hamlet, or wholly or in part maintained or supported thereby, or executing or holding any office thereof or therein, shall before any court or person or persons whatsoever, be deemed and taken to be by reason thereof an incompetent witness for or against such district, parish, township, or hamlet, in any matter relating to such rates or cesses; any law, usage, statute, or custom to the contrary in anywise notwithstanding.

The 50 G. 3. c. 49. which requires the churchwardens and overseers to submit their accounts to two justices at special sessions, to be holden within the fourteen days appointed by the 17 G. 2. c. 38. for delivering in the said accounts to the succeeding overseers, is not a substitution in lieu of that provision in the 17 G. 2., but is cumulative; and if the overseer refuse to deliver in such accounts to the succeed-

William Lester's case, 16 *East*. 374. *Bott, Cont.* 57. *Campbell* moved for a *habeas corpus* on the behalf of *William Lester*, late overseer of the poor of the parish of *Paddington*, who was detained in custody, under a warrant of commitment signed by two justices, for not delivering in his accounts to the succeeding overseers, within fourteen days from the time of their appointment. The warrant of commitment recited the appointment of *Lester* as one of the overseers, and subsequent appointment of two persons to succeed him in that office, and recited also the 17 *Geo.* 2. *c.* 38. whereby churchwardens and overseers are directed, within fourteen days from the appointment of their successors, to deliver in to their successors a just, true, and perfect account, &c. to be verified by oath, &c.; and that it had been duly proved before them the justices, that *Lester* had refused to make and yield up to his successors such account as aforesaid, *within the time therein before-mentioned, and limited or appointed for that purpose;* and then went on to direct that *Lester* should be taken into custody, and detained until he should make and yield up such account verified as aforesaid. — It was contended, that the 50 *Geo.* 3. *c.* 49., which directs the accounts to be submitted to two justices, at a special sessions, within the fourteen days appointed by the former act, was substituted in place of the obligation to deliver them over to the succeeding overseers. By the 50 *Geo.* 3. the overseers who

refuse or neglect to submit their accounts to the justices, are made liable to be committed; if, therefore, they have fourteen days allowed them for submitting their accounts to the justices, how can they be required within that time to deliver them over to the succeeding overseers? The duty imposed by one act is inconsistent with and would interfere with the other. — Ld. *Ellenborough* C. J. The provision in the 50 *Geo.* 3. seems rather to apply to the manner of examining the accounts when yielded, leaving the accounts still, as before, to be delivered over to the succeeding overseers; but they are also within the fourteen days to be submitted to the justices for examination. An ulterior means is afforded of investigating them before the justices; that act only means that they shall be exhibited to the justices; it is, therefore, for a different object. It is very expedient, that the succeeding overseers should have the accounts delivered in to them immediately from the former overseers, which is the object of the 17 *Geo.* 2.; then the 50 *Geo.* 3. directs that the account, so to be delivered, shall be submitted to the justices to be examined and approved by them; that, therefore, is manifestly cumulative. — *Le Blanc* J. The churchwardens and overseers are to deliver in to the succeeding overseers their accounts verified on oath before one or more justices, who are to sign and attest the same; that is provided for by the 17 *Geo.* 2. By the subsequent act the accounts are to be submitted to two or more justices at a special sessions; and power is given them to examine and approve such accounts, and they are required to signify their approbation of them under their hands, and then to sign and attest as directed by the former act. This provision, therefore, is perfectly consistent with the provision in the former act. — Rule refused.

50 G. 3. c. 49. — ing overseers within the fourteen days, he may be committed by two justices for such refusal.

Goff's case, *M.* 55 *Geo.* 3. 3 *M.* & *S.* 203. *Goff* was committed to the county gaol by warrant of two justices, upon complaint made against him for that he having been duly appointed collector of the rates for the parish of *Richmond*, pursuant to stat. 25 *Geo.* 3. *c.* 41. refused to account, and pay over the monies collected by him by virtue of the act, to *W. S.* the person duly authorised to receive them; and the justices adjudged that he should be committed to the gaol, there to remain without bail or mainprize until he should have made a true and fair account, and until such money, as upon the said account should appear to be remaining in his hands, should be paid by him or his sureties to *W. S.*, and they required the keeper of the gaol to receive and safely keep him *until he should be discharged by due course of law.* And because the warrant directed that he should be detained "until he was discharged by due course of law," it was contended that the warrant was void. After argument, Lord *Ellenborough* C. J. said, If there was any uncertainty on the face of the commitment, I should have agreed with the argument; but coupling the premises with the conclusion, is it not in effect the same as if the warrant had directed the gaoler to detain the party until he had accounted? We must read the warrant as if the magistrates had in the conclusion recited over again the adjudication. — *Le Blanc* J. Some precise authority ought to be shewn to justify the Court in adopting the objection made to this warrant. When the party has accounted and paid

Commitment of a parish collector of the rates to the county gaol, there to remain until he should have made a true account, and until such money as upon the said account should appear to be remaining in his hands, should be paid by him or his sureties; was held well, although it concluded by directing the gaoler to keep him until he should be discharged by due course of law.

25 G. 3. c. 41. over the money, he will be entitled to be discharged by due course of law. The prisoner remanded.

If the overseers, after allowance of their accounts by two justices at special sessions, and an order by the justices to pay over the balance to their successors, which order is confirmed on appeal, refuse to pay such balance, the two justices may issue their warrant to levy the same under 50 G. 3. c. 49. upon the application of one of the succeeding overseers, although the rest of the churchwardens and overseers refuse to concur in such application: therefore, where the justices refused to issue such warrant upon such application, the court granted a mandamus.

Rex v. *Pascoe and Another*, 2 *M. & S.* 343. *Bott, Cont.* 58. *Mandamus* to two justices of *Cornwall*, to grant a warrant of distress for levying 39*l.* 13*s.* 11½*d.* upon the goods of *D.K.* and *R.R.*, late overseers of the poor of *Ludyan*. It appeared from the affidavit in support of the rule, that the accounts of the said overseers, for the year ending *Easter* 1813, were submitted to the defendants at a special sessions for allowance, when the defendants disallowed several items, upon objection taken, amounting to 43*l.* 1*s.* 11½*d.*, and made an order on the said overseers to pay over the same to the present overseers. The late overseers appealed against the order to the next quarter sessions, which appeal was dismissed for want of sufficient recognisance; but notwithstanding such dismissal they refused to pay over the balance; whereupon, application was made to the defendants for a warrant of distress, to levy the same on their goods. Upon this a summons issued, and the late overseers attended the defendants, together with one of the two present churchwardens, and two of the three present overseers, when it appeared that they had paid over 3*l.* 8*s.*, but refused to pay the remainder; whereupon, the defendants were required by one of the present overseers to issue their warrant of distress; but as the other two parish officers refused to concur with him in such application, the defendants thought they had no jurisdiction for the want of the concurrence of the major part of the present churchwardens and overseers, and thereupon refused to issue their warrant. It was stated, that the overseer who made the request, was not able to procure any other of his colleagues to concur with him. — It was contended, upon the construction of stat. 50 *Geo.* 3. *c.* 49. that the warrant of the justices could only issue upon the application of the major part at least of the subsequent churchwardens and overseers. The statute enacts, "that in case the late churchwardens and overseers, or any of them, shall refuse, &c., it shall and may be lawful for the *subsequent churchwardens and overseers*, by warrant from any two or more justices, to levy all such sums, &c." That imports that the collective body of the parish officers must act in this instance, for otherwise the statute would have added, "or any of them," as it had done in speaking of the late overseers. There is not any ground in this case to impute fraud to the overseers who *refuse to concur*. — But the Court said, that without imputing fraud in this case they should be restraining the meaning of the statute too much, if they did not put it into motion upon the application of any of the overseers; that the mischief of a more strict construction would be great, for then the dissent of any one of the churchwardens and overseers would have the effect of suspending the statute. — Rule absolute.

It is not necessary in order to give the justices at sessions jurisdiction to hear an appeal against overseer's accounts, that such accounts should

Rex v. *The Just. of Colchester*, *H.* 2 & 3 *G.* 4. 5 *B. & A.* 535. *Jessopp*, in last *Mich.* term, had obtained a rule *nisi* for a *mandamus* to the justices of *Colchester*, to enter continuances, and hear an appeal against the overseers' accounts of the parish of *St. Botolph*, in the borough of *Colchester*. The accounts in question had, on the 14th *May* last, been duly allowed by two justices, pursuant to 17 *G.* 2. *c.* 38., at a petty sessions; but they had not been examined and allowed at a special sessions, pursuant to stat.

50 *G.* 3. *c.* 49. The sessions dismissed the appeal, on the ground that they had no jurisdiction. After cause shewn, *per Curiam*, We are quite satisfied that the sessions had jurisdiction, and that they ought to have heard the appeal. This rule must be absolute. R. A. Rex v. The Justices of Colchester.

The officers constituted by stat. 22 *Geo.* 3. *c.* 83. have, like the churchwardens and overseers, certain accounts to pass, and documents to receive. previously have been examined and allowed, pursuant to 50 G. 3. c. 49.

§ 46. The allowance by a justice of the account of the guardian under § 38. appears open to appeal. 22 G. 3. c. 83.

Of the Settlement of the Poor.

Concerning the *binding and ordering* of parish and other apprentices, see title **Apprentices**, Vol. I.

Concerning the *filiation and maintenance* of bastard children, see title **Bastards**, Vol. I.

Concerning the *ordering of* servants and other workmen and labourers, see title **Servants**, Vol. V.

For these fall in with this title, no further than as they happen to become poor; upon which account their settlements are here treated of; but nothing otherwise in particular concerning them.

It is to be noticed in this place, that the stat. of 22 *Geo.* 3. *c.* 83. *ante*, establishes many new regulations with regard to the maintenance of the poor, but as it is optional in any parish or other place, to adopt these regulations or continue in the present mode, it is judged requisite for the present to preserve this title unaltered; in Sect. III. 7. (*ante*,) is inserted, an account of the said stat. of 22 *Geo.* 3. together with other statutes relating to the same subject. 22 G. 2 c. 83.

It may be proper here to notice stat. 16 *Geo.* 2. *c.* 18. which enacts, that *it shall be lawful for every justice or justices of the peace for any county, riding, city, liberty, franchise, borough, or town corporate within their respective jurisdictions, to make, do, and execute all and every act or acts, matter or matters, thing or things appertaining to their office as justice or justices of the peace, so far as the same relates to the laws for the relief, maintenance, and settlement of poor persons; for passing and punishing vagrants; for repair of the highways; or to any other laws concerning parochial taxes, levies, or rates; notwithstanding any such justice or justices of the peace is or are rated to or chargeable with the taxes, levies, or rates within any such parish, township, or place affected by any such act or acts of such justice or justices as aforesaid.* (See *Rex* v. *Great Chart, Burr. S. C.* 194.) 16 G. 2. c. 18. Justices may enforce the laws relating to parish taxes, &c. though they are chargeable themselves.

§ 3. *Provides, that this act, or any thing therein contained, shall not authorise or empower any justice or justices of the peace for any county or riding at large, to act in the determination of any appeal to the quarter sessions for any such county or riding, from any order, matter, or thing relating to any such parish, township, or place, where such justice or justices of the peace is or are so charged, taxed, or chargeable as aforesaid; any thing herein contained to the contrary in any wise notwithstanding.* Proviso.

By stat. 12 *R.* 2. *c.* 7. the poor were to repair, in order to be maintained, to the places where they were *born.*— By stat. 11 *H.* 7. *c.* 2. they were to repair to the place where they *last* 12 R. 2. c. 11 H. 7. c. 2.

19 H. 7. c. 12. *dwelled*, or were *best known*, or were *born*. By stat. 19 *H.* 7. *c.* 12. to were they were *born*, or *made last their abode by the space of three years*. 1 Ed. 6. c. 3. By stat. 1 *Ed.* 6. *c.* 3. this was explained to be, where they had been *most conversant* by the 1 J. 1. c. 7. space of three years. By stat. 1 *J.* 1. *c.* 7. they were to be sent to the place of their *dwelling*, if they had any; if not, to the place where they last dwelt by the space of *one* year; if that could not be known, then to the place of their *birth*.—So that there were two kinds of settlement all along: by birth and by inhabitancy; first, for any indeterminate time, next for three years, then for one year. And this last continued to the time of stat. 13 & 14 *C.* 2. *c.* 12. by which after reciting that "*Whereas the number of poor* within England and Wales *is very great and burthensome; and whereas, by reason of some defects in the law, poor people are not restrained from going from one parish to another, and therefore do endeavour to settle themselves in those parishes where there is the best stock, the largest commons or wastes to build cottages, and the most woods for them to burn and destroy, and when they have consumed it, then to another parish, and at last become rogues and vagabonds, to the great discouragement of parishes to provide stocks, where it is liable to be devoured by strangers:* it is enacted, *that it shall and may be lawful, upon complaint made by the churchwardens or overseers of the poor of any parish, to any justice of peace, within* 40 *days after any such person or persons coming so to settle as aforesaid, in any tenement under the yearly value of ten pounds, for any two justices of the peace, whereof one to be of the* quorum, *of the division where any person or persons that are likely to be chargeable to the parish shall come to inhabit, by their warrant to remove and convey such person or persons to such parish where he or they were last legally settled, either as a native, householder, sojourner, apprentice, or servant, for the space of* 40 *days at the least, unless he or they give sufficient security for the discharge of the said parish, to be allowed by the said justices.*

13 & 14 C. 2. c. 12. Poor people going from one parish to another.

How to be settled, coming to any tenement under ten pounds yearly value.

Altered and explained by 1 J. 1 c. 17. 3 & 4 W. & M. c. 11.

Foreigners.

Respecting foreigners, the following cases have occurred.

Must be maintained where they are found.

Cowred's case, *T.* 6 *W.* & *M.* *Comb.* 287. 2 *Bott*, 17. A *Dutchwoman* and her two children landed at *Harwich* from *Holland*, and removing to another place, were sent back to *Harwich* by an order of two justices.—*Eyre* J. (*Holt* C. J. being absent) said, "You must keep them when you have them for aught I know; for it seems to be a case omitted out of the statute." Order quashed.

A foreigner may gain a settlement, and if he marry an Englishwoman she will have his settlement.

Within forty days.] *St. Giles's* v. *St. Margaret's*, *E.* 2 *Geo.* 1. 1 *Sess. Ca.* 97. An *Englishwoman* was married to a foreigner who had no settlement in *England*: the husband continued for the space of forty days in a parish, irremoveable, for that there was no place to which he could be removed; and it was urged, that the wife continuing with him as part of his family for forty days, in a place whence he hath not a right to be removed, gains a settlement thereby. But Ld. *Holt* C. J. thought that where a person stays forty days in a place whence he hath a right not to be removed, that gains a settlement: otherwise, where he only stays in a place, because they do not know whither to remove him.

A foreigner may gain a set-

Rex v. *astbourne*, *T.* 43 *Geo.* 3. 4 *East*, 103. 2 *Nol. P. L.* 150.

The person removed was the wife of a foreigner, and she was removed to *Eastbourne*, (the place of her maiden settlement,) from the parish of *Seaford* where he had for two years before, and at the time of the removal, resided, and rented a house of above the value of 10*l*. exercising therein the trade of a baker: he thought he could exercise his trade better at *Eastbourne*, and thereupon the wife and children became chargeable. The husband acquiesced in the removal, and accompanied them to *Eastbourne*. — The sessions confirmed the order of removal, and the question before the court of king's bench was, whether a foreigner can gain a settlement in this country? In the argument in support of the order, the above case of *St. Giles's* v. *St. Margaret's* was cited, and it was urged that the 13 & 14 *C.* 2. referred only to the poor of *this* kingdom, *i. e. England* and *Wales*. — *Per* Ld. *Ellenborough* C. J. This man was not an alien enemy, but a *German* by birth, an alien *amy*. And as such, though he may not take a lease of a dwelling-house or shop, by reason of the statute 32 *H.* 8. *c.* 16., yet he may occupy a tenement of 10*l*. a-year, and carry on his trade there like any other person. Then if he may do so he has that interest which enables him to gain a settlement by the provision of the legislature: the law of humanity obliges us to afford relief to poor foreigners to save them from starving.—*Lawrence* J. In answer to the observation, that the statute of *C.* 2. did not extend to any but the poor of *England* and *Wales*, said, that, "without dispute, *Scotchmen* and *Irishmen* may gain settlements here." Both orders quashed.

Rex v. Eastbourne.

tlement by occupying a tenement of 10l. a-year for 40 days.

There are several descriptions of persons who are incapable of gaining any settlement by any acts of their own. The first is that of married women, who, during their marriage state, cannot *by any act of their own* acquire any settlement. What is their proper settlement will be considered in another place. The next description consists of infants under the age of seven years.

Married women;

Infants under seven.

In *Rex* v. *Hasfield*, *E.* 13 *Geo.* 2. 2 *Bott*, 462. It was decided that an infant under seven could not be removed from the parish in which his property lay; and in the case of *Rex* v. *Houghton le Spring*, *H.* 41 *Geo.* 3. 1 *East*, 247. 2 *Bott*, 516. this case was adverted to, and from the observations which fell from the judges upon that occasion, it would seem that they considered the infant's *possession* and not his *occupation* to be the circumstance which rendered him irremoveable; for that *his occupation* must have been merely imaginary. See also *Rex* v. *Camner*, 2 *Bott*, 18. and 2 *Nol. P.L.* 89. 3*d edit.*

In *Rex* v. *St. Mary Cardigan*, 6 *T. R.* 116. 2 *Nol. P. L.* 151, 152. (which see *post*, tit. Settlement by Parentage.) Ld. *Kenyon* C.J. seemed to be of opinion that persons attaint could not, while attaint, acquire any settlement.

Persons attaint.

A deserter can, while he is such, do no act to gain a settlemnet. *Rex* v. *Norton* juxta *Kempsey*, 9 *East*, 206.

Deserters.

Soldiers cannot (while quartered in any place), acquire a settlement there by hiring and service. See *Rex* v. *Beaulieu*, *post*, sect. viii. 2. But by renting a tenement they may. See *Rex* v. *Brighton*, end of sect. x. 5.

Soldiers

It remains to be considered by what methods a settlement may be gained, which will be done in the following order;—*viz.*

It will be observed that sections V. VI. and VII. are cases of settlements which may rather be said to be communicated to than gained by the parties. The six succeeding sections are cases of settlements which are gained by the parties by their own immediate act.

It may be well to preface the consideration of these various methods of gaining a settlement by noticing a late enactment which is of considerable interest in a general view of the subject.

54 G. 3. c. 170.

By stat. 54 *Geo.* 3. *c.* 170. § 1. after reciting in the preamble, that divers local acts of parliament have lately passed, containing enactments relative to the maintenance and regulations of the poor, varying the general law with respect of particular districts, parishes, townships, or hamlets; and it is expedient, that some of such enactments should be repealed, and that other provisions contained in such acts should be made general; it is enacted, "*That all enactments and provisions contained in any act or acts of parliament since the commencement of the reign of his late majesty* George *the first, whereby any alteration is made, in respect of gaining or not gaining a settlement within any particular district, parish, township, or hamlet, shall be, and the same are hereby repealed; and that all and every person shall be deemed and taken to have acquired and to acquire a settlement in every such district, parish, township, or hamlet, by any ways and means, he, she, or they would or might have done, or would or might do, in case such act or acts, or any of them, had not been made and passed; and notwithstanding the same or any of them are or was in force and operation.*"

All enactments and provisions in respect of gaining settlements contained in local acts repealed.

Persons born in prisons, or houses licensed for the reception of pregnant women, not to

§ 2. Provides, "*that no person shall be deemed or taken to acquire any settlement in any district, parish, township, or hamlet, by reason of such person being born of the body of any mother actually confined as a prisoner within the walls of any prison; or any house licensed for the reception of pregnant women, in pursuance of an act made and passed in the thirteenth year of his present ma-*

jesty's reign for the better regulation of lying-in-hospitals, and other places appropriated for the charitable reception of pregnant women; in which any such prison or house shall be situated." 54 G. 3. c. 170. gain a settlement thereby.

§ 3. Provides, "*that whensoever any person shall be born of the body of any poor person, in any house of industry, or house for the reception and care of the poor of any district, parish, township, or hamlet, which shall be locally situated in any district, parish, township, or hamlet contributing to the expenses of maintaining the poor in such house, or in any other district, parish, township, or hamlet, not contributing to such expense, such person shall, so far as regards the settlement of such person, be deemed and taken to be born in the district, parish, township, or hamlet, by whom the mother of such person was sent to, and on whose account the mother of such person was received and maintained in such house."* Provision respecting settlements by reason of birth in any poorhouse or house of industry belonging to united parishes.

§ 4. Provides and enacts, "*that no person shall be deemed or taken to gain any settlement by reason of any residence within any district, parish, township, or hamlet, while he, she, or they shall be detained or confined as a prisoner within any such district, parish, township, or hamlet, on any civil process or for any contempt whatsoever."* Prisoners for debt or contempt not to gain settlements while in custody.

§ 5. Provides and enacts, "*that no gate-keeper or toll-keeper of any turnpike-road or navigation, or person renting the tolls and residing in any toll-house of any turnpike-road or navigation, shall thereby gain any settlement in any district, parish, township, or hamlet."* No gate-keeper or person residing in any toll-house to gain a settlement thereby.

§ 6. Provides and enacts, "*that no person or persons shall gain any settlement in any district, parish, township, or hamlet, by reason of any residence in any house or other dwelling-place provided for the residence of such person or persons, by any charitable institution, while such person or persons shall be supported and maintained at the expense of such charitable institution, as an object or objects of such charity."* No person maintained in any charitable institution, to gain any settlement by residence therein.

And by stat. 59 *Geo.* 3. *c.* 12. § 11. It is enacted, that every house and building which shall be purchased or hired under the authority of that act, (vide sections 8, 9, 10. 14, 15, 16, 17, & 18, *ante*,) shall in all questions relative to the settlement of persons born or lodged therein, be deemed and taken to be part of the parish on behalf of which the same shall be purchased or hired, and by which the same shall be used as a poorhouse or workhouse. 59 G. 3. c. 12. Building hired &c. taken to be in the parish &c., hiring in questions of settlement.

§ V. Of Settlement by Birth.

It is sometimes difficult to prove the place of the birth of a pauper. The two topics commonly made use of for this purpose are in their own nature inconclusive. The first question that is commonly asked a pauper is, "Where were you born?" Unto which it is impossible for him to give a determinate answer, and his testimony is more or less credible according to the means he has had of information. The parish register is a proof not of the birth but of the christening; which are not always in the same place: besides that the register is no evidence at all of the *identity* of the person. In the case of *Creech St. Michael* v. *Pitminster*, *E.* 14 *Geo.* 3. *Burr. S. C.* 765. 2 *Bott*, 13. 2 *Nol. P. L.* Proof of birth. The settlement *by birth* may be

proved by the copy of the parish register of christenings, and by identifying the person.

293. 3d ed., the *mother* of the pauper was subpœnaed, but did not attend; and no account was given of her being under any legal disability of attending. For which reason the sessions quashed the order of the two justices, as not being supported by the best evidence that the nature of the case would admit of. On the other hand, a copy of a register, taken from the parish register of *Pitminster*, was produced. "Christenings 1735, *John*, son of *John Every* and *Mary* his wife, baptized *December* 5." And *John Carter*, one of the witnesses, swore, that the pauper lived many years ago with him the said *John Carter;* that *John Every*, who lived in *Pitminster*, and died long since, was considered as the pauper's father; and that he knew *Mary Every* who lives in *Pitminster*, and whom he understood to be the pauper's mother, and has heard the pauper call her mother. On its being moved for a rule to shew cause why the order of sessions should not be quashed, Ld. *Mansfield*, C. J. seemed to think, and so it was afterwards determined on shewing cause, that this evidence was sufficient.

1. *Of bastards, and their settlement by birth.*
2. *How far the settlement of bastards is affected by certificates.*
3. *Whether bastards be removeable from the mother.*
4. *Of legitimate children, and their settlement by birth.*

(1.) Of Bastards.

[Note; It is not in this place questioned, who shall or shall not be deemed a bastard, but the settlement only is considered of such as are first supposed to be bastards; other matters relating to them, as concerning their filiation, and maintenance, and the like, are treated of under title, Bastards, Vol. I.]

How far bastards are to be settled where born.

A bastard child is primâ facie *settled where born:* And this was the ancient genuine settlement; and a person could have no other, until he had resided for a certain time, as is aforesaid. See *Whitechapel* v. *Stepney*, *Carth.* 433. 2 *Bott*, 12. 1 *Nol. P. L.* 288. 3d *edit. Comner* v. *Milton*, and *Cripplegate* v. *St. Saviour's*, (*post.*) For a bastard gains a settlement in its place of birth *ex necessitate*, for being *nullius filius*, it cannot otherwise be provided for, except a reputed father can be found.

But this rule admits of divers exceptions; which are,

Bastard born in a place by collusion.

(1.) If a woman come into a place by privity and collusion of the officers where she belongs, and be there delivered of a bastard; such bastard gains no settlement, notwithstanding its birth. *Sett. & Rem.* 66.

And in the case of *Masters* v. *Child*, 3 *Salk.* 66. 2 *Bott*, 2. and *Tewkesbury* v. *Twining*, 2 *Bott*, 1. It was ruled, that if a woman big with child of a bastard, and settled in one parish, be persuaded to go into another, and there be delivered; this fraud will make the parish chargeable where the mother was settled, though the child were not born there: But if a woman with child of a bastard, come accidentally into one parish, and be persuaded by some of the parishioners to go into another parish, which she doth, and there be delivered, this shall not charge that parish which persuaded her. So the bastards of lodgers are settled where

born. *Rex* v. *Spitalfields*, *E.* 12 *W.* 1 Ld. *Raym.* 567. 2 *Bott*, 2. 1 *Nol. P. L.* 288.

(2) Also, if a bastard be born under an order of removal, and before the mother can be sent to her place of settlement, being hindered by water or otherwise; such bastard shall not be settled where so born, but at the mother's settlement. *Reg.* v. *Ickleford* *M.* 10 *Ann.* 1 *Sess. C.* 33. *Sett. & Rem.* 66. 2 *Bott*, 3. 1 *Nol. P. L.* 290. 3*d edit.*

Bastard born after the order of removal is made out.

(3) And by 35 *Geo.* 3. *c.* 101. § 6. "The removal of persons during sickness may be suspended; and if during such suspension any unmarried woman shall be delivered of a bastard child, the settlement of such mother, at the time of her delivery, shall be deemed the settlement of such child. Provided that all acts heretofore made touching bastard children, or concerning the mothers or reputed fathers of such children, shall remain in full force, as well in cases where by this act the settlement of such child is directed to be the same as that of the mother, as where the settlement remains as it did before."

Bastard born where the removal of the mother is suspended.

(4) Also, if the officers be carrying a woman by virtue of an order of removal, and she be delivered on the road *in transitu*, the bastard shall go with the mother where she is going by virtue of the order, notwithstanding the birth. *Jane Gray's case.* *E.* 10 *Ann.* *Sett. & Rem.* 66. 2 *Bott*, 3. 1 *Nol. P. L.* 290. 3*d edit.*

Bastard born in removing.

(5) Again, in the case of *Much-Waltham* v. *Peram*, *M.* 8 *W.* 2 *Salk.* 474. 1 *Nol. P. L.* 290. 3*d edit.* A woman big with a bastard child was removed by order of two justices from *Much-Waltham* to *Peram.* Before the next sessions she was delivered at *Peram* of a bastard child. At the sessions *Peram* appealed, and the justices adjudged the woman to be last settled at *Much-Waltham*, and ordered her to be sent back thither. After which an order was made, to settle the child at *Peram*, which it was moved to quash, because, though, regularly, bastards must be maintained where born, yet in this case, where there seems to be a contrivance, it shall not be so. Where an order is reversed, all things happening subsequent thereunto shall be avoided thereby. This child therefore being born pending the order, shall be esteemed in law to be born in that parish whereunto the mother, on the appeal, is returned back. The court seemed to agree to this, and a rule was made to shew cause, but none was shewn.

Bastard born after the removal which is reversed, and before the appeal.

And further, in the case of *Westbury* v. *Coston*, *H.* 2 *Ann.* 1 *Salk.* 121. 2 *Salk.* 532. 2 *Bott*, 3. A woman big with child was removed by order of the justices from *Westbury* to *Coston*; and, pending the order, before the next quarter sessions, she was delivered of a bastard child. *Coston* appealed, and thereupon the order of the two justices was reversed; but the child was sent back to *Coston* as the place of his birth. But by the Court: The birth at *Coston* did not settle the child there, because it was under an illegal order procured by *Westbury*, which order being reversed, the matter is no more than this, that they unjustly procured the woman to go thither. And *Holt* C. J. said, though here be no fraud in this case, yet here is a wrongful removal, and the reversal makes all void *ab initio*: Fraud, or not fraud, is not

If a woman pregnant be removed by an order, and she be delivered, and there be an appeal, and the order be reversed, the child must be sent back.

material in this case; but the settlement of the child depends upon the removal; for if that was wrong, they shall not ease themselves by it. See also *Bareham* v. *Waltham*, 2 *Bott*, 2.

Bastard born in the house of correction.

(6) A child born in the house of correction shall be sent to the place of its mother's settlement. *Suckley* v. *Whitborn*, 2 *Bulst*. 358. 2 *Bott*, 2. See 54 *Geo*. 3. *c*. 170. § 2. *ante*.

In prison.

And in the case of *Elsing* and the County Goal of *Hereford*, 1 *Sess. Ca*. 94. 1 *Nol. P. L*. 290. A bastard was born in the county goal: Resolved, that the settlement was with the mother. See 54 *Geo*. 3. *c*. 170. § 2. *ante*.

20 G. 3. c. 36. In the house of industry of an incorporated district.

(7) By 20 *Geo*. 3. *c*. 36. All bastard children born in the house of industry, of any hundred, or other district, incorporated by act of parliament for the relief and employment of the poor, shall be deemed to belong to the parish or place where the mother of such bastard child was legally settled.

33 G. 3. c. 54. Bastard born under the act for establishing friendly societies.

(8) By 33 *Geo*. 3. *c*. 54. for the encouragement and relief of friendly societies. § 25. Every child which shall be born a bastard in any parish or place, the mother whereof shall at the time of the birth of such child be a member of any such society, and be residing in such parish or place under the authority of that act; such child shall have the same settlement which the mother had at the birth of such child: any law, usage, or custom to the contrary notwithstanding. Vide Vol. II. *title* Friendly Societies.

51 G. 3. c. 79. Bastards of lunatics.

(9) By stat. 51 *Geo*. 3. *c*. 79. § 7. No bastard child which shall be born of any lunatic, insane person, or dangerous idiot, in any county asylum, shall thereby gain a settlement in the parish in which such asylum shall be situated; but the place of the legal settlement of any such child so born as aforesaid shall be in the parish where the mother of such child was last legally settled.

33 G. 3. c. 54. not repealed by 35 G. 3. c. 101.

Rex v. *Idle*, *M*. 59 *Geo*. 3. 2 *B*. & *A*. 149. Removal of *Mary Wade*, and her bastard child from the township of *Idle* to the township of *Rawden*; the sessions confirmed the order as to the mother, but discharged it as to the child, subject to the opinion of the Court of K. B. on the following case. The pauper *Mary Wade's* settlement was admitted to be in the township of *Rawden*, derivatively under her father *John Wade*. For several years prior to the 4th *October*, 1817, the said *John Wade* was an efficient member of a friendly society, legally established in pursuance of the act passed in the 33 *Geo*. 3. intituled, "*An act for the encouragement and relief of friendly societies*." And on the 4th *October*, 1817, a certificate as to that fact was duly made and given by the president and stewards of the society, and the same was afterwards duly verified before, and certified by, a magistrate, according to the provisions of the several statutes made concerning friendly societies. [The case then proceeded to set out the certificate, which was in all respects regular.] This certificate, and the verification thereof, were, on the 7th *October*, 1817, delivered to the churchwardens and overseers of the poor of the township of *Idle*. The bastard child was born in that township on the 19th *November*, 1817, whilst *John Wade*, and his family (of which the said *Mary Wade* was then a member) were residing there

See Vol. II. p. 522.

under the authority, or supposed authority, of the certificate and the acts relating to friendly societies. After argument, *Abbott* C. J. said, I am of opinion that the original order of the two magistrates was good, and that the sessions were mistaken in their judgment. It has been argued that the friendly society act was repealed by the subsequent act of the 35 *Geo.* 3. *c.* 101., which provides that no person shall be removable from any parish until actually chargeable, and thus, it is said, rendered wholly unnecessary the former protection by certificate under the friendly society act. But I think that is not so: for it may be very convenient, notwithstanding the effect of the 35 *Geo.* 3. to keep the provisions of the 33 *Geo.* 3. in force. In many cases, a labourer who might wish to come into a parish might not be able to obtain employment there, for fear that, by so doing, he might bring burdens upon the parish. But if he came with a certificate from a friendly society, that fear would be removed. It would, therefore, be depriving the members of such societies of a material benefit, if we were to hold the 35 *Geo.* 3. to be a virtual repeal of the provisions of the 33 *Geo.* 3. Then the question arises, who are the persons protected by the latter act? The object of the act being to facilitate the finding of employment, it should receive a liberal construction. I think therefore that the certificate granted to the head of the family protected not only him, but also all the members of the family, and placed them in the same situation in which he stood. If so, then they would not be removable till they became actually chargeable. According to the authority of the case of *Rex* v. *Great Yarmouth*, (8 *T. R.* 68.) this woman, under the circumstances stated to us, was removable; but although that was so, still it may be very questionable, whether, in this particular case, the parish officers were bound to remove the mother? There is an obvious distinction between the effect of a certificate under the 33 *Geo.* 3. and that of one under 8 & 9 *W.* 3. For the former of these two statutes enacts, "that every child born a bastard in a parish during the mother's residence therein under the authority of that act, shall have the same settlement as the mother." The attention, therefore, of the parish officers, would naturally not be called to the situation of a woman residing under a certificate granted under 33 *Geo.* 3.; and I think, therefore, that they were justified in not removing in this case. No inconvenience can arise to the other parish from this; for if the mother had been actually removed, the child would have been born in their parish, and so would have been settled there. They, therefore, are placed in no worse situation by our holding that the child shall follow the mother's settlement, though she was not removed. I think, therefore, that the parish officers were not bound in this case to remove the mother, and that the child being born in *Idle*, whilst the mother was residing there under the authority of the 33 *Geo.* 3. *c.* 54., followed her settlement in *Rawden*, and that the order of sessions was therefore wrong.—Order of sessions quashed. **Rex v. Idle.**

(9) By stat. 13 *Geo.* 3. *c.* 82. § 5. A bastard born in a lying-in hospital shall follow the mother's settlement. [But as it may happen that the mother's settlement is not known, and there may be difficulties upon the parish where such hospital is situate, in remo- **13 G. 3. c. 82. Bastard born in a lying-in hospital.**

vals and appeals concerning such settlement, it is enacted, that no such hospital shall be established without licence from the justices in sessions.] See stat. 54 *Geo.* 3. *c.* 170. § 2. *ante*, p. 268.

A room in a parish workhouse, licensed pursuant to 13 G. 3. c. 82. and appropriated to the reception of and used for the purpose of delivery of pregnant women resident within the parish, whether settled there or elsewhere, and the expence of which room was defrayed in common with the general expences of the workhouse, out of the parish rates, is not an hospital or place within the 13 G. 3. c. 82. § 3.

Rex v. *The Inhab. of Manchester, E.* 2 *Geo.* 4. 4 *B.* & *A.* 504. Two justices, by their order removed *Margaret* the wife of *James Crocker*, and her two children, *Ellen* aged eight years, and *James* aged six weeks, from the township of *Manchester* to the parish of *St. Andrews, Canterbury*. The sessions, upon appeal, confirmed the order as to *Margaret Crocker* and *Ellen*, her daughter, and quashed it as far as it respected *James*, the son; subject, as to the settlement of the said *James*, to the opinion of the Court of K. B. on the following case: In the *Manchester* workhouse there is a room for which a licence has been obtained, as for an hospital, or place for the reception of lying-in women. This room has been duly licensed pursuant to the provisions of the stat. 13 *Geo.* 3. *c.* 82. provided, that, under the circumstances, it is such a place as can be duly licensed within the meaning of that act. The room is appropriated by the officers of the town of *Manchester* to the reception of women resident within the township, but settled elsewhere, and pregnant with children likely to be born bastards, and also to the reception of pregnant women chargeable to the township and settled in *Manchester*. And in some few instances, pregnant women have been received from other districts, upon a compensation paid to the overseers of *Manchester* by the overseers of the place in which such pregnant women were resident, in respect of the accommodation afforded. Women in the situation above described, having settlements elsewhere than in *Manchester*, if too far advanced in pregnancy to be safely removed to their settlements, are placed by the town's officers in this room for the purpose of being delivered. The expences incurred in respect of the room are defrayed in common with the general expences of the workhouse out of the parish rates. *Mary Crocker* being settled in the parish of *St. Andrews, Canterbury*, but resident within the township of *Manchester*, and pregnant with a child likely to be born a bastard, was placed by the officers of the town of *Manchester*, in the above-mentioned room in the workhouse, and was there delivered of the pauper *James*, who was born a bastard. The question for the opinion of the Court was, whether the above-mentioned room is a hospital, or place within the meaning of the act of parliament referred to, and whether, by force of that act, the settlement of *James Crocker* is in the parish of *St. Andrews*, or whether it is in the township of *Manchester*. — After argument, *Abbott* C. J. said, It seems to me, that in this case we cannot consider this an hospital or place within the act. By the 10th section, the person having the management of it is directed before the admission of any pregnant woman into such hospital, to take her before a justice to be examined whether she be married or single; and other duties are cast upon them for that purpose. By the 4th section, an inscription is to be placed over the door or public entrance of every such hospital, stating, that it is licensed for the public reception of pregnant women, and supported by voluntary contributions. In the present case, it is only a room set apart for this purpose in the workhouse, the expences of which are defrayed out of the poor's rate. I think, therefore, that this

cannot be said to be used for the public reception of pregnant women, nor supported by charitable contributions. The township, therefore, is not protected by the 5th section; and the sessions have come to a right conclusion. Order of sessions confirmed.

Rex v. The Inhabs. of Manchester.

(11) By stat. 51 *Geo.* 3. *c.* 79. § 7. No bastard child which shall be born of any lunatic, insane person, or dangerous idiot, in any lunatic asylum, shall thereby gain a settlement in the parish in which such asylum shall be situated; but the place of the legal settlement of any child so born as aforesaid, shall be in the parish where the mother of such child was last legally settled. See Vol. III. *tit.* Lunatic.

51 G. 3. c. 79. Bastard of lunatic born in lunatic asylum.

(12) Foundlings, see *post*, p. 283.

2. How Bastards are affected by Certificates.

New Windsor v. *White Waltham. T.* 5 *Geo.* 1. 1 *Stra.* 186. 2 *Bott*, 577. 2 *Nol. P. L.* 123. 3d *edit.* The parish of *White Waltham* gave a certificate to a man and a woman supposed to be his wife, with which they went into the parish of *New Windsor*, and had there six children. Afterwards the woman swearing they were never married, the question was, whether (upon that supposition) the children, as bastards, should be settled in the parish where they were born, or in the parish which gave the certificate with their father and mother? And by the Court: There is no doubt but the bastard of a certificate person is settled in the place of his birth, for he is not such an issue as will follow the settlement of his father or mother, neither is such bastard *his* or *her* child within the intention of the statute, so as to be sent back with the parent.

Bastard born under certificate, is settled where born.

But in this case the point turned chiefly upon the certificate's being conclusive (for as the parish had given a certificate with the man and woman, as husband and wife, the Court held, that they were not afterwards to be admitted to dispute the validity of such marriage, and adjudged the children to be settled in the parish granting the certificate): Therefore in the case of *Hilton* v. *Lidlinch*, *T.* 16 *Geo.* 2. 2 *Sess. Ca.* 170. 2 *Stra.* 1168. *Burr. S. C.* 187. 2 *Bott*, 5. The question came under debate again; which was thus: A single woman went into the parish of *Lidlinch*, with a certificate from *Hilton*; lived there a year and then had a bastard child. The sole question was, whether the child should be settled in the parish where born, or in the parish giving the certificate? By the Court: The certificate must be taken to be good, and all fraud to be laid out of this case, it being a year that she dwelt in the parish before she was delivered of the child; and wherever this Court, in determining a settlement, adjudges upon the point of fraud, that fraud must be expressly stated; for as fraud is odious, it is never to be presumed. The cases hitherto adjudged as to this point have either depended on point of fraud or an illegal removal. So where the child is born in a gaol, he shall be settled in the parish where his mother is: for she shall be construed to be in custody of the law, and in all other respects a parishioner, see *Elsing* v. *County Gaol of Hereford*, *ante*, p. 272. But the present case stands entirely on stat. 8 & 9 *W.* which, for the encouragement of labour and in-

A bastard does not come within the meaning of the word *family* in the certificate acts, and therefore if a certificated woman be delivered of a bastard child it is settled where born, and not in the certificating parish.

dustry, gave power of removing persons by certificate, which certificate obliges the parish to whom given to receive and continue them in that parish, till they become actually chargeable, and then such person is to be removed, together with his or her *family*, and in another place, with his or her *children*, to the place from whence the certificate was brought. The question then is, whether the bastard is included under the words *family* or *children?* And we take it he is not; for the law takes no notice of bastard children, they are *filii nullius*, *filii populi*, and are *primâ facie* settled where born.

And if the certificate undertakes to provide for a woman *and her child*, she being then pregnant of a bastard, the child is settled in the certificated parish.

Rex v. *Wyke*, *T.* 19 & 20 *Geo.* 2. *Burr. S. C.* 264. 2 *Bott*, 6. 1 *Nol. P. L.* 289. 3*d edit.* Two justices made an order for the removal of *John Catton*, otherwise *Speight*, being a bastard, from *Wyke* to *Hipperholm*, the place of his birth. Upon appeal, the sessions quashed that order. The case was: *Sarah Catton*, mother of the pauper, came on the 25th of *March* by certificate from *Shelfe* to *Hipperholm*, being then pregnant with a bastard child, namely, the said *John Catton*, otherwise *Speight*, the pauper; and was afterwards, in *April* following, delivered of him at *Hipperholm*. The sessions being of opinion that the said *John Catton*, the pauper, by reason of the said certificate, did not gain a settlement in *Hipperholm* where he was born a bastard as aforesaid, discharged the original order. The certificate itself was returned by the *certiorari*, which undertook that *Shelfe* should provide for her *and her child*, whenever they should become chargeable. It was moved to quash this order of sessions, upon this objection, that the justices at the sessions had mistaken the law; in support whereof was cited the case of *Hilton* v. *Lidlinch*. On a rule to shew cause, the counsel on the other side insisted, that *Shelfe* was the last legal place of settlement of the pauper. And they argued that this case was clearly distinguishable from that of *Hilton* v. *Lidlinch*. For here the woman is stated to be then pregnant with a bastard child, and the certificate expressly undertakes to provide for her *and her child;* so that *Shelfe* plainly had this very child in contemplation, no other child being named or hinted at. Unto which it was answered, that by the express resolution in the case of *Lidlinch*, a bastard of a certificate woman is settled where born; and fraud shall never be presumed where it is not stated. The question therefore is, whether the unborn bastard is to be considered as certificated? 'Tis true, a certificate is conclusive against the parish who gives it: but that is only in such points as are included in the certificate. This certificate, undertaking to provide for her and her child, must mean a child in being. If she had no other child, they should have stated the matter specially. — Ld. C. J. *Lee* and Mr. J. *Wright* agreed, that they must take the child referred to by the certificate to be a legitimate child then in being. And Mr. J. *Foster* observed, (to which observation the other two justices agreed,) that it did not at all appear, that the parish who gave the certificate *knew* that the woman was then with child: and he added, that there were many instances where women were near their time, without being known to be so. The counsel for *Hipperholm* proposed, that it should go back to the sessions to be more fully stated: but their opponent said, and the Court agreed, that could not be done without consent; and the counsel for *Wyke* refusing to consent, the

Court were of opinion that the rule must be made absolute. The order of sessions therefore was quashed, and the original order affirmed, adjudging the settlement to be at *Hipperholm* where the pauper was born.

Bastard born under a certificate, including the child with which a woman, whom they state to be unmarried, is at the time pregnant, is settled in the mother's parish.

Rex v. *Ipsley, M.* 10 *Geo.* 3. *Burr. S. C.* 650. 2 *Bott,* 6. 2 *Nol. P.L.*123. 3*d edit. Anne Causier* came into the parish of *Ipsley*, with a certificate from *Studley* in the words following: "To the churchwardens and overseers of the poor of the parish of *Ipsley;* we, the churchwardens and overseers of the poor of the parish of *Studley,* do hereby certify, own, and acknowledge *Ann Causier,* spinster, *and the child or children* that she *now* goeth with, to be our inhabitants legally settled with us in our said parish of *Studley:* and if at any time hereafter the said *Anne Causier,* or her child or children which she now goeth with, shall become chargeable to and ask relief of your said parish of *Ipsley,* we, the said churchwardens and overseers of the poor of our said parish of *Studley,* do hereby promise for ourselves and successors, that we will, when requested by any of you, receive, relieve, and provide for them, as our inhabitants, according as the law in that case requires." The child was born at *Ipsley,* within about a month after she came to reside there under the certificate. It was argued, that the certificate in this case could not operate as to the unborn child, but that the child was notwithstanding settled in the place where it was born: that this was not a certificate within the act of 8 & 9 *W. c.* 30. The undertaking relates to a nonentity, an embryo. An unborn child cannot be personally certificated. It is no part of the parent's family. And the act obliges only the certifying parish to provide for the pauper mentioned in the certificate, together with *his or her family;* and a bastard, in the sense of the act, is part of no person's family.—But the Court were clearly of opinion, that the parish of *Studley* was bound by this certificate, which (*a*) takes notice of the woman's being then unmarried and with child; and acknowledges the child she then went with to be legally settled with them in their parish. And Ld. *Mansfield* C.J. observed, that the woman was very big with child; and was understood by both parishes to be so: and *Studley* expressly promised to provide for the infant she then went with. Therefore they ought to be bound by their certificate. An infant *in ventre sa mere* may be, to a variety of purposes, considered as born.

But such certificate must expressly state the woman to be single (it seems), and *quære* even then, if it will extend to a child born long afterwards?

Rex v. *Mathon, T.* 37 *Geo.* 3. 7 *T.R.* 362. 2 *Bott,* 10. 1 *Nol. P.L.* 288, 289. 3*d edit. R. Cagear* and his wife and four children were removed from *Cradley* to *Mathon.* The sessions confirmed the order, and state dthe following case: *Margaret Cagear,* single woman, being settled at *Mathon,* and being then pregnant of an illegitimate child that was afterwards born a bastard, went to *Cradley* in 1738, under a certificate from *Mathon,* wherein the parish officers of *Mathon* "for themselves and their successors, with the consent of the parishioners, engaged to relieve and receive *Margaret Cagear* with *the child of which*

(*a*) This is the point of difference between this case and the last, viz. *Rex* v. *Wyke* (*K.*)

R. v. Mathon.

she was then pregnant, and all other *children that she might thereafter have*, until she or they should acquire a subsequent settlement, whenever she or any of them should become chargeable." *M. Cagear* resided in *Cradley* under that certificate until her death; and in 1746 had the present pauper, *R. Cagear*, an illegimate child, who continued to reside in *Cradley* until removed by the present order, without having done any act to gain a settlement for himself.—In support of the order of sessions the above case of *Rex* v. *Ipsley* was cited, and it was urged, that there was the same reason to extend the present certificate to this pauper; the certificate mentioning the mother's situation, and extending to all after-born children.—Ld. *Kenyon* C. J. It is not now necessary to question the propriety of the decision of *Rex* v. *Ipsley*. That certainly went much beyond the former cases on this subject. However, that is distinguishable from the present case: that only extended to the child with which the woman was then pregnant; and a child in *ventre sa mere* is capable of being described. But this child was not born until eight years after the certificate was granted, and being illegitimate, he is not included in the general words in the certificate, which extends only to legitimate children. Order of sessions quashed. [It is observable, that it does not appear that the woman was stated to be unmarried in the certificate; though the case, as drawn up for the consideration of the Court, calls her "single woman."]

3. Whether removable from their Mother.

Bastard not to be removed whilst a nurse child.

Hitherto concerning the settlement of a bastard child: but notwithstanding the child's settlement, yet nevertheless if the mother and the child have different settlements, it seemeth that the bastard child, even as all other children, shall go with the mother for nurture until the age of seven years, as a necessary appendage of the mother, and inseparable from her. Thus in *Cripplegate* v. *St. Saviour's* (*post.* p. 282.), it was agreed by the whole Court, that the age of a nurse child, so as to go along with its mother, is until seven years of age. So also in the case of *Skeffreth* v. *Walford*, *M.* 3 *Geo.* 2. 2 *Sess. Ca.* 90. 2 *Bott*, 4. The order was to remove a woman to her settlement; and her bastard child, of two years of age, to another parish at a distance from the mother, being the place of its birth. It was objected, that the child being a nurse child, they cannot separate it from the mother, by reason of the care necessary to nurture so very young a child; which none can be supposed so fit to administer as the mother of it; and therefore it should have been sent with her to the place of her settlement. And it was quashed by the Court for that reason.

Except when deserted by the mother.

But although the child may not be separated from the mother, yet if she voluntarily desert it, it seemeth that the cause of nurture then ceaseth, and that then it may be sent to its place of settlement.

To be maintained whilst a nurse child by its own parish.

Whilst the child continues with its mother as a nurse child, and during that time not removable to its place of settlement, yet the parish where the child's proper settlement is shall maintain such child in that other parish.

This question, viz. "whether children under seven years of age, who are living with their mother for nurture, at the place of the mother's settlement, but whose own settlement is in another parish, are to be maintained by the parish where the mother lives and is settled, and from whence they are irremovable, or by the parish where they are settled;" came on, and was determined in the Court of *B.R. in H.* 17 *Geo.* 3. in the case of the *King* v. *The Inhabitants of Hemlington. Dougl.* 9. (*n.*2.) *Cald.* 6. 2 *Bott,* 7. 2 *Nol. P. L.* 304. 324. 3*d edit.* The case was this: *Elizabeth,* a single woman, with her child *Mary,* went under a certificate, from *Hemlington* to *Darlington,* in which last parish she had two bastard children, and there became chargeable. An order being thereupon made for the removal of her and *Mary* to *Hemlington,* she took the two children who were born in *Darlington* with her, they being both under the age of emancipation. Two justices made an order on the parish of *Darlington* for the maintenance of the two children born in that parish, which order upon an appeal was quashed. *Davenport* shewed cause in support of the order of sessions. After mentioning the cases of *Wangford* v. *Brandon, and others,* stated in 3 *Burn's Justice,* p.336, 337. (13th edit.), he made similar observations upon them, to those which are to be found in *Burn's* note, viz. that what had been said in those cases relative to the present question, was only matter of argument, the point in dispute in all those cases having been the *settlement,* not the *maintenance.* He mentioned that *Burn,* in another place, p.326. (13th edition,) seemed fully of opinion, that the parish of the mother is liable; and contended, that it was contrary to the spirit and intention of the 18th *Eliz. c.* 3. to burthen the parish where bastards are born with their support. That the inconvenience of such a practice would be very great in many cases where the two parishes might be situated at opposite extremities of the kingdom. That there is no statute which gives the justices any authority to make an order for the maintenance of children on a parish where they do not actually reside. That there are only two instances where a power of that nature is vested in justices, viz. 1. Where it is necessary to assess one parish in aid of the poor rate of another; and 2d. In the cases of paupers improperly removed. That it would be much more expedient, that the parish which is bound to maintain the mother, should also maintain, as casual poor, the children which she had a right to bring with her, and which could not be taken from her before the age of seven; and that he had been informed, that the practice had been conformable to what he contended for. *Wallace* was going to answer *Davenport,* but the Court stopped him, and said that the point was clear and settled.— Ld. *Mansfield* C. J. said, Mr. *Davenport* has cited no authorities in support of Dr. *Burn*'s proposition, and there are many against it, viz. *Rex* v. *St. Giles's in the Fields, T.* 6 & 7 *Geo.* 2. *Burr. S. C.* No. 2. *Rex* v. *Wangford,* 2 *Wils.* 3. *Fort.* 307., and *Rex* v. *Saxmundham,* 2 *Bott,* 18., which is directly in point. The practice is also agreeably to those cases. *Aston* J. cited another case, where it was directly held that the parish where the settlement of the nurture child is, shall maintain it.— Judgment to quash the order of sessions, and con-

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firm the original order by which the parish of *Darlington* was charged (*a*).

The case of *Saxmundham* is very short in *Fortescue,* and the point is merely stated as a position, without the facts or orders, or the reasoning of the court. But the case of *The Inhab. of Shermandbury* v. *Bolney, Carth.* 279., which Mr. *Davenport* mentioned in his argument, was exactly the same with the present; for there can be no distinction (as to this question) between bastards and legitimate children, who have a different settlement from their mother. In that case a woman with three children, all under seven, being settled in *Shermandbury,* married a person settled in *Bolney.* After the marriage, the mother and the three children were sent to *Bolney.* The parish of *Shermandbury,* before the marriage, allowed three shillings *per* week for three children; and the payment being discontinued after the marriage, on complaint of the parish of *Bolney,* two justices made an order that *Shermandbury* should continue to pay the three shillings. The sessions, and afterwards the court of *B. R.*, confirmed the order of the justices. And the Court said, " This case is within the equity of the statute for the relief of the poor, and there is no reason that *Shermandbury* should be discharged of the children by their mother's marriage." This case is cited in *Bott* from *Carthew,* but for another point. It has been supposed that there might be difficulties in obtaining and enforcing an order, in a case like the present. But the case of *Shermandbury* v. *Bolney* shews, that the justices of the county in which the parish liable is situated, ought to make the order, on the complaint of the parish officers of the parish where the mother lives. The order in the case of *Hemlington* was probably made in the same manner. The inconvenience when the two parishes are at a great distance from each other, is only similar to what is experienced on appeals brought on removals from parishes at a great distance. As to the method of enforcing the order, it may be done by indictment, or perhaps the parish officers, in whose behalf it is made, might maintain a special action of assumpsit against those upon whom it was made. *Vide Rex* v. *Toms, E.* 20 *Geo.* 3. *Dougl.* 401. In *Rann* v. *Green,* 1 *Cowp.* 474., the Court held, that when persons acting under a *private* act of parliament make an order by authority of such act for the payment of money, the law raises an *assumpsit.* The same reason must hold in the case of a public act (*b*).

(*a*) This point has again been decided in the case of *Simpson et al.* v. *Johnson et al. M.* 19 *G.* 3. 1779, *Dougl.* 7. The question, by whom a nurture child, settled in one parish and living with its mother in another, ought to be maintained, was before the court in *T.* 8 *W.* 3. in the case of the *King* v. *The Inhab. of Lackington, Comb.* 380, 381, but was left undecided.

(*b*) In these cases there is a legal liability arising from the statute. For cases in which there is only a moral obligation, and upon which it is argued by the learned reporters, that an action cannot be supported, even upon an express promise; and for a full discussion of these points, see the note to *Wennall* v. *Adney,* 3 *Bos.* & *Pull.* 249.

Order of two Justices (*a*) upon the Churchwardens and Overseers of *D.* for maintenance of a poor Child settled in *D.*, but residing with its Mother in *H.* for nurture. (*b*)

County of { To the churchwardens and overseers of the poor of the parish of ——— in the county of ———.

WHEREAS J. P. *esquire, one of* H. M.'s *justices of the peace for the said county, did on the complaint of the churchwardens and overseers of the poor of the parish of* H., *in the county of* Y., *issue a summons under his hand and seal, dated the* ——— *day of* ——— *instant, and directed to the churchwardens and overseers of the poor of the parish of* D., *in the said county of* ———, *thereby requiring them, or some or one of them, to appear before him and such other of H. M.'s justices of the peace for the said county of* ——— *as should be at* ——— *in* ——— *in the same county, this day at* ——— *o'clock in the forenoon, to shew cause why an order should not be then and there made, for the payment by the same churchwardens and overseers of the poor of the parish of* D., *of a weekly sum to the said churchwardens and overseers of the poor of the parish of* H. *for the maintenance of* A. B., *a bastard, born in the said parish of* D. *and then resident in the said parish of* H. *as a nurse child with his mother* M. B. *And whereas* A. O. *one of the overseers of the poor of the said parish of* D. *having appeared before us* J. P. *and* K. P. *esquires, two of H. M.'s justices of the peace for the said county of* ——— *in pursuance of the before-mentioned summons for that purpose, hath not shewed to us any sufficient cause why an order should not be made upon them the said churchwardens and overseers of the poor of the said parish of* D. *to pay a weekly sum to the said churchwardens and overseers of the poor of the said parish of* H., *towards the maintenance of the said bastard child,* [or, *And whereas it hath been duly proved to us upon oath, that the said churchwardens and overseers of the poor of the said parish of* D., *have been duly summoned to appear before us the said justices, to shew cause why an order should not be then and there made; but they or any of them have not appeared in pursuance thereof, and have not shewed to us any sufficient cause why the said order should not be made.*] *And whereas the said* M. B., *in and by her examination taken in writing and upon oath this day, before us the said justices, hath declared that she was delivered of the said* A. B. *in the said parish of* D. *who was born a bastard there, and is now of the age of* *years, or thereabouts, that he the said* A. B. *is now chargeable to the said parish of* H., *and that she the said* M. B. *is not willing to part with her said child until he attains the age of seven years. Now in consideration thereof, and on the complaint of the churchwardens and overseers of the poor of the said parish*

(*a*) See *Cald.* 6, 7, 8. *Rex* v. *Hemlington,* and § iii. 4. § v. 3.
(*b*) Before stat. 59 *Geo.* 3. *c.* 12. § 5. (which see § iii. 4.) an order of relief might be made by one justice. See stat. 3 *W.* 3. *c.* 11. § 11.

of H., *we do hereby order the said churchwardens and overseers of the poor of the said parish of* D., *or some of them, to pay to the said churchwardens and overseers of the poor of the said parish of* H. *the sum of* ——— *weekly, and every week, for and towards the support and maintenance of the said* A. B., *until they shall be ordered according to law to forbear the said allowance or otherwise.*

Given under our hands and seals at ——— *aforesaid, the* ——— *day of* ——— *one thousand eight hundred and* ———.

J. P. (*L. S.*)
K. P. (*L. S.*)

4. Settlement by Birth of legitimate Children.

The place of birth of legitimate children is primâ facie the place of settlement.

The place of birth is *primâ facie* the place of settlement. *Rex* v. *Heaton and Norris*, 6 *T. R.* 653.

"Evidence of birth is only evidence that the mother was locally resident in the parish at the time.—It is the slightest evidence possible of a settlement." Per Ld. *Ellenborough* C. J. *Rex* v. *Wakefield*. 1 *Smith's Rep.* 514. 5 *East*, 335. *S.C.* The place of birth is the weakest evidence of settlement. Per *Le Blanc* J. *S.C.*

Two justices send a child to *Spitalfields* as the place of its birth, neither father nor mother having a settlement; and on appeal the justices at sessions were of opinion, that birth gains no settlement, but only in case of bastardy. *Per Curiam*, (*absente Holt* C. J.) Birth makes a good settlement, and the labour lies on them where it was born, to find another. The order made on appeal was quashed. *Spitalfields and St. Andrews, Holborn, Fort.* 307.

Cripplegate v. *St. Saviour's*, *H.* 8 *Ann. Fol.* 265. 2 *Bott*, 13. 1 *Nol. P.L.* 287. 3*d edit.* A child of three years of age was removed from one of these parishes to the other; and it appeared in the order, that they removed him there, because he was born there, not having any other settlement. By the Court: The father's settlement is the settlement of the children, when it can be found out; otherwise the birth of the child *primâ facie* is the settlement of the child, until there is another settlement found out. So a bastard child's settlement is its birth, because it is *filius nullius*; so if they cannot find out the settlement of a legal father, the birth is a settlement of the child. If a child be dropt in a parish, they may remove him to the place of his birth, or where his father's settlement was; and the settlement by birth is only *quousque* they find the father's settlement; and if they never can find that, it is absolute upon them.

In the case of *Clavely and Burton*, *Stafford* Assizes, 5 *C.* 1. 2 *Bulst.* 351. 2 *Bott*, 11. It was holden by the judges of assize, that if the mother of a child born in one parish die in another parish, while passing to a third, such child shall be settled where it was born, and not in the parish where it was left destitute by the death of the mother.

How far legitimate children shall follow the mother's settlement.

But here it is to be observed, that in the cases above mentioned, the point was not in question, Whether or no if the father had no settlement, yet if the *mother* had a settlement, such children should follow the mother's settlement, or should be sent to the place of their birth? But the rule intended to be drawn from these cases, which is sufficient for this place, and which the cases

will well bear, is no more than this, that the place of the birth of a legitimate child is the settlement of it, until another settlement be found out.

Whitechapel v. *Stepney, M.* 9 *W. Carth.* 433. 2 *Bott,* 12. 1 *Nol. P.L.* 285. 288. 3*d edit.* It was holden that a legitimate child, where its parent is a vagabond, gains a settlement by birth; but where the settlement of the parent of a legitimate child is known, such child must follow the settlement of the parent; and see *Coxwell* v. *Shillingford,* (*post,* 284.)

Where the parent is a vagrant.

A travelling woman, having a small sucking child upon her, was apprehended for felony, and sent to the gaol, and was hanged; this child is to be sent to the place of its birth, if it can be known, otherwise it must be sent to the town where the mother was apprehended, because that town ought not to have sent the child to gaol, being no malefactor. *Dalt. c.* 73. *p.* 168.

Where the father and mother are both dead.

And where a child is first known to be, that parish must provide for it till they find another. *Comb.* 364. 372.

First known place of abode.

Rex v. *Great Clacton, H.* 60 *Geo.* 3. 3 *B.* & *A.* 410. Removal from *St. Margaret's* in *Ipswich* to the parish of *Great Clacton* in *Essex.* Upon appeal, the sessions confirmed the order, subject, &c. Case: — *Walter Welsh,* the pauper's late father, was born in *Ireland,* and was married in that country in 1807, to *A. Clately,* who was also born there. The pauper was born in 1810, in the parish of *Great Clacton,* and the father died in the parish of *St. Margaret* in 1817, without having gained a settlement in *England.* The mother subsequently married *H. Fayett,* a settled inhabitant of the parish of *St. Margaret,* where she resided, and the pauper had become chargeable. Before the last marriage she had acquired no settlement in *England.* It was contended that under 59 *Geo.* 3. *c.* 12. § 33., the pauper ought to have been removed by a pass to *Ireland.* But the court of K. B. held that the removal was properly made. Without determining what might have been the case if the mother had also been removable at the time, it is clear here that she having acquired a settlement by marriage, the pauper's case is to be considered as if he had no parent alive. Then, if so, the clause in question only applies to persons who are themselves born in *Ireland,* which he was not. Order of sessions confirmed. See *tit.* Vagrants. Vol. V.

Child of *Irish* parents without settlement.

By stat. 13 *Geo.* 2. *c.* 29. for confirming and enlarging the powers given by charter to the governors and guardians of the hospital for the maintenance and education of exposed and deserted young children, it is provided, § 7. that no child, nurse, or servant, received or employed in such hospital, shall by virtue thereof gain any settlement in the parish where such hospital shall be situate; and consequently the settlement of *foundlings* is not different from that of all other persons: that is, if they are legitimate children, they shall follow their father's settlement, if known; if not, then their mother's settlement: if neither of these be known, or if they are bastards, they shall be settled where they were born: if that cannot be known, which is properly the case of a *foundling,* this seemeth to fall under the general rule, that every person shall be maintained and provided for in the place where he happens to be, until a settlement can be found; for in a Christian civilized country, no person ought to be suffered to perish merely for want of necessaries. Only, in the present case, the

13 G. 2. c. 29. Foundlings maintained in hospitals.

act takes such children from the parish, and leaves them to the provisions of the hospital. See stat. 54 *G.* 3. *c.* 170. § 2, 3. *ante*, pp. 268, 269.

§ VI. Of Settlement by Parentage: and herein, of Emancipation.

The foregoing cases of settlement of legitimate children are founded on the fact of the parent's settlement being unknown. If, however, the father's last place of settlement be known, that is the legal place of settlement of his children: and they will take successively every settlement which the father may from time to time acquire: *his last* settlement being always *their settlement*, until they have acquired one by their own act, or are emancipated. And this rule holds good wherever the father may be, or wherever he may die.

Settlement of a legitimate child is with the parents.

A legitimate child born, or a child dropped in a place where a person is vagrant, gains no settlement by being dropped; but where the father was last legally settled. *Coxwell* v. *Shillingford*, *H.* 4 *Ann. Fost.* 313. *Fol.* 269. 2 *Bott*, 18. 1 *Nol. P. L.* 274. 3*d edit.* And this though the child be an idiot. *Hard's case*, 2 *Bott*, 17. 1 *Nol. P. L.* 277. 3*d edit.*

At what age a child may gain a settlement distinct from the parents.

Formerly it was held, that a child should continue with its parents as a nurse child, until it should be eight years of age, during which time it should not be deemed capable of gaining a settlement in its own right; but by later resolutions it seems to be agreed, that a legitimate child shall necessarily follow the settlement of its parents as a nurse child, or as part of the family, only until it shall be seven years of age; and that after that age it shall not be removed as part of the father's family, but with an adjudication of the place of its own last legal settlement, as being deemed capable at that age of having gained a settlement of its own. But it seemeth not difficult to determine with exact certainty, at what age a child may have acquired a settlement of its own, distinct from the parent's settlement. For by the 5 *El. c.* 5. § 12. a child of seven years of age may be bound apprentice to a shipwright, fisherman, owner of a ship, or other person using the trade of the seas; and by the vagrant act of the 17 *Geo.* 2. a vagrant's child of that age may by the justices be put out an apprentice (*a*): and as soon as he shall have resided and lodged in a parish for 40 days under the indenture, he will have thereby gained a settlement. So that the precise time, when a person may have gained a settlement in his own right, is at the age of seven years and forty days.

How far children shall follow the father's settlement, where the father was settled in one place, and the child born in another.

Q. v. *St. Giles*, *E.* 10 *Ann.* 1 *Sess. Ca.* 18. Order to remove an infant to the parish of *St. Giles's*; because it appeared that, though the father was settled at another place, yet the child was born at *St. Giles's*. Quashed by the Court; for the place of the settlement of the child is with the father, and not the place where the child was born.

(*a*) By stat. 56 *Geo.* 3. *c.* 139. parish officers cannot bind out any child as parish apprentice until such child shall have attained the age of nine years. See Vol. I. *tit* Apprentice.

Where the father gained a settlement after the child's birth.

St. Giles's, Reading, v. *Eversly, Blackwater, H.* 10 *Geo.* 1. 2 *Sess. Ca.* 102. 1 *Stra.* 580. 2 *Ld. Raym.* 1332. 2 *Bott*, 19. and *Ironacton* v. *Painewick*, (*post.*) 1 *Nol. P.L.* 274. 3*d edit.* It was ruled by all the Court upon argument, that where a father gains a second settlement after the birth of his child, that settlement is immediately communicated to the child. And a child may be sent to the place of his father's settlement, without ever having been there before.

A child may be removed with the father to his settlement, though it have never been there before.

So in *Sowton* v. *Sydbury, M.* 12 *Geo.* 2. 2 *Sess. Ca.* 150. *Andr.* 345. The question was, Whether the children, being above the age of nurture, shall be removed with the father to the father's settlement, where the child had never inhabited? By *Lee* C. J. In the case of *Eversly, Blackwater*, the Court were of opinion, that a child might be sent to the settlement of his father, though it had never been there before, contrary to an opinion of Ld. *Parker* in a former case. And he said, "The true distinction, I think, is, that where children have gained no settlement, but continue part of their father's family, they shall follow their father's settlement.

If a child be born in a parish in which the father has a settlement, and the father after gain a settlement in another parish, that last parish is the settlement of the child.

And in *Cunmer* v. *Milton, T.* 2 *Ann.* 2 *Salk.* 528. 3 *Salk.* 259. 2 *Bott*, 12. 1 *Nol. P. L.* 274. 3*d edit.* A man settled at *Cunmer*, (*a*) and having several children born in that parish, afterwards removed to *Milton* with his children, and gained a settlement there; and becoming very poor, his children born in *Cunmer* were by an order of two justices sent to *Cunmer; viz.* those that were under seven years old; the justices apprehending that the place of their birth was the place of their lawful settlement. And this order being removed into the K. B. by *certiorari*, it was insisted to maintain the order, that the children had gained a settlement in *Cunmer* by birth, which was not altered or defeated by any subsequent act of their father in gaining a settlement at *Milton;* for his children were with him there only as nurse children, and his settlement shall not be the settlement of the children. But by *Holt* C. J. The place where a bastard is born is the place of his settlement, unless there is some trick to charge the parish; but the place where legitimate children are born is not the place of their settlement, for let that be where it will, the children are settled where their parents are settled; as, for instance, if the father is settled in the parish of *H.* but goes to work in the parish of *B.*, and before he gains any settlement there, has a son born in the parish of *B.*, and then dies; this child may be sent to the parish of *H.* for it is not the birth, but the settlement of the father that makes the settlement of his child; and if the father have gained a new settlement for himself, he hath likewise gained a new settlement for his children, who do not go with him to his new settlement as nurse children, but as part of his family.

Removing nurse children to the settlement of their parents. The order is good, though it takes no notice of the death, nor ad-

Bucklebury v. *Bradfield, E.* 26 *Geo.* 3. 1 *T.R.* 164. 2 *Bott*, 21. 1 *Nol. P.L.* 287. 3*d ed. Eliz. Knott*, aged about five years; *John Knott*, aged about two years and a half; and *Sarah Knott*, aged about one year and a half, were removed from *Bucklebury* to *Bradfield:* And in the order of removal was set forth the names and ages of the paupers, and that they were come to inhabit, &c., and that upon due proof made thereof, *as well upon the examination of Elizabeth Knott their grandmother, upon oath*, as otherwise (and so on in the usual

(*a*) In Capper's Dictionary this is given *Cumnor*.

Bucklebury v. Bradfield.

judges the place to which they are removed.

form); the sessions on appeal quashed the order upon the merits, and stated the following case: That the paternal grandfather of the paupers was, at the time of his death, settled in *Bradfield*, and that he left several children by his wife *Eliz. Knott*, and amongst others *Charles Knott*, who went to *Twickenham* in 1777, where he married *Sarah Slade*, who dying about *Christmas*, 1784, *Charles* brought the paupers to *Elizabeth* his mother, who was living at *Bucklebury*, in 1785, and told her they were his children, and desired her to take care of them, and he would send money for their maintenance; the paupers remained with *Elizabeth* about fourteen weeks, but she not receiving any money from her son, and being unable to maintain them, they were removed to *Bradfield*, who appealed to the next sessions, and *Charles Knott* was subpœnaed, but did not appear, and the appeal was adjourned, and it was recommended to the parties to endeavour at their joint expense to find *Charles Knott;* but at the next sessions, he not appearing, the appeal was then heard, but was further adjourned to the next sessions, when the appeal was again heard, and the removants proceeded (according to the practice of the sessions) to support the order by the following evidence; (viz.) That *David Knott*, the paternal grandfather, had his settlement at his death in *Bradfield*, and that his son *Charles* was born there: They produced the register of the marriage of *Charles Knott* with *Sarah Slade*, and also the baptisms of the paupers. It did not appear whether *Charles* had gained any settlement subsequent to his derivative settlement, nor was any evidence given to identify the paupers to be the children of *Charles* and *Sarah Knott*, except as above. *Wilson*, in support of the order of sessions, contended, that the order was informal on the face of it; that the paupers, being nurse children, ought not to have been removed without their father or mother, unless the order had stated they were dead, otherwise the children might be settled in a different parish from their parents. Another objection was, that the order was grounded on the *examination of the grandmother*, and not on that of the *father*. And there was no evidence produced at the sessions but the grandmother to identify those children, or that the father had not gained a subsequent settlement. The other side was stopped by the Court, who were clearly of opinion, that there was no objection to the competency of this evidence: and as to the other point, that it was incumbent on the parish of *Bradfield* to have shewn that the father had gained a subsequent settlement. Order of sessions quashed, and the original order confirmed.

Proof of the father's settlement is sufficient to establish the settlement of the son, if nothing appear to the contrary.

Rex v. *Stone, M. 35 Geo. 3. 6 T. R. 56. 2 Bott, 21. Mary* the wife of *Thomas Davenport*, and *Mary*, her infant daughter, were removed from *Stone* to *Seighford* in *Staffordshire*. The sessions quashed the order, and stated, that *Thomas* had left his wife and family for three quarters of a year, during which time she had not heard of him, nor had he since been in either township. That the settlement of *Thomas's* father was in *Seighford*, but *Thomas* himself was not born there, and it did not appear by any evidence that he had gained any settlement in his own right. It was further stated that the removal had been made without any examination of *Thomas*, the husband of *Mary*, and that due diligence had not been used by the respondents to find him out. Ld. *Kenyon* C. J. said, that there was nothing in the case; that the evidence produced was legal evidence, and if not contradicted, suffi-

cient to establish the settlement in law; but that the sessions seemed to have thought it indispensably necessary to procure further evidence, in which they were mistaken.

Father attaint.

Rex v. *St. Mary, Cardigan, M.* 35 *Geo.* 3. 6 *T.R.* 116. 2 *Bott*, 22. 1 *Nol. P. L.* 277. 3*d edit. Elizabeth James*, her daughter *Mary*, and *James* and *John James*, sons of her husband by a former wife, were removed from *St. Mary, Cardigan*, to the parish of *L.* The sessions quashed the order. The pauper's husband was settled in *L.*: he was convicted of sheep-stealing, and sentenced to death, but before execution he escaped from gaol. Two years afterwards he returned to *Cardigan*, and continued there till 1792, during that time he married, and his wife had by him *John*, one of the persons removed; on her decease he married again, and had the pauper *Mary*: he afterwards absconded in 1792. The wife's settlement before marriage was in *St. Mary, Cardigan*. It was argued that the father's settlement was destroyed by his attainder. Ld. *Kenyon* C. J. A settlement is not the property of any man; it cannot escheat, neither can it be called a franchise: in the case of a franchise it was rightly decided, that by attainder the franchise was lost, and that the party had no right to vote at an election. But this person was before his attainder settled in the parish to which the paupers were removed, and I think that the father's settlement was communicated to them. It would be another question whether the man himself could acquire a settlement after the attainder.

Discharged by order under the sign manual.

Rex v. *Haddenham, E.* 52 *Geo.* 3. 15 *East*, 463. *Bott, Cont.* 169. 1 *Nol. P.L.* 277. 3*d edit.* Removal of *Elizabeth Hill* from *Thame*, in *Oxfordshire*, to *Haddenham*, in *Bucks*, which was confirmed by the sessions on appeal, subject, &c. — Case: *Elizabeth Hill* was born in the parish of *Thame*, in *May*, 1791, and has not acquired any settlement in her own right, and at the time of her birth the settlement of her father, *Solomon Hill*, was in *Thame*. It was admitted that at the *Lent* assizes for the county of *Gloucester*, in 1790, *Solomon Hill* was convicted of horse-stealing, and received sentence of death. The following instrument, under the royal sign manual, was then produced: "*G. R.* Whereas *Solomon Hill* was, at the last assizes holden for our county of *Gloucester*, tried and convicted of horse-stealing, and had sentence of death passed upon him for the same; and whereas some favourable circumstances have been humbly represented to us in his behalf, inducing us to extend our grace and mercy unto him, and to grant him our free pardon for his said crime; Our will and pleasure therefore is, that you cause him the said *Solomon Hill* to be forthwith discharged out of your custody, and that he be inserted for his said crime in our first and next general pardon that shall come out for the *Oxford* circuit, without any condition whatsoever; and for so doing this shall be your warrant. Given at our Court at *St. James's*, this 12th day of *May*, 1790, in the 30th year of our reign. By his majesty's command, *W. W. Grenville*. To our trusty and well-beloved our justices of assize for the *Oxford* circuit, the high sheriff of our county of *Gloucester*, and all others whom it may concern." The case further stated, that search had been made in the office of the clerk of assize of the *Oxford* circuit, and it did not appear that any general pardon including the said *Solomon*

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Hill had been made out, or that there was any other general pardon for the said circuit to be found in the said office from the time of the conviction of the said *S. Hill*, whilst the late Mr. *Meredith Price*, the then clerk of assize of the said circuit, held that office; and that it did not appear to the court, by any other evidence, that any such general pardon, including the said *S. Hill*, or any special pardon to him under the great seal, had been granted. That pursuant to the direction of the instrument under the sign manual aforesaid, the said *S. Hill* was shortly after discharged, and has been since at large unmolested for his said crime. That in 1803 the said *S. Hill* purchased, of one *J. Chapman*, for 100 guineas, two cottages, with the appurtenances, in *Haddenham*, copyhold of inheritance, held of the manor of *Haddenham with Cuddington*, which were surrendered to the use of the said *S. Hill*, his heirs and assigns, and that he was thereupon admitted tenant thereof, according to the custom of the said manor, and immediately took possession of and resided on the premises so purchased by him, and still continues to reside on part thereof, and has sold and surrendered the remainder, and that he has not since done any other act whereby to gain a settlement. After argument, Ld. *Ellenborough* C. J. said, The point raised is of some doubt and of more general importance than usually arises on settlement cases. In the form of it a purchase was made, which satisfies the terms of stat. 9 *Geo.* 1. *c.* 7. § 5. "that no person shall acquire any settlement in any parish for or by virtue of any purchase of any estate or interest in such parish whereof the consideration for such purchase doth not amount to 30*l.* *bonâ fide* paid for any longer time than such person shall inhabit in such estate, &c." Now this was in its form a purchase for more than 30*l.*, and he resided on it for more than 40 days, and he has not been removed from it. Who then was in a condition to remove him for the 40 days? The lord, who has, by admitting, accepted him for his tenant; even if he could, after that admission, object to him, has not objected. If the lord had no notice of the objection at the time of the admission, I do not mean to say that he was afterwards precluded from making the objection; but he has not in fact objected, and the tenant has now continued for nine years in possession; and, by the statute of limitations, part of the rents, issues, and profits can no longer be recovered from him; so that if he had a defeasible estate during the first 40 days, he has held the estate undefeated for more than that period, which cannot now be impeached. And whether or not the crown could have impeached his title, he has now held the estate under a title, not defeated for above 40 days. The other judges assented. Orders confirmed.

The child born after the father's death.

Reg. v. *Clifton*, 5 *Ann.* 19 *Vin. Abr.* 382. 2 *Bott*, 19. 1 *Nol. P.L.* 274. 3*d edit.* So if the father die before the child is born, yet the child is settled where the father was settled before his death.

The children shall have the father's settlement derived from their grandmother in preference to that of their mother.

Rex v. *St. Matthew's*, *Bethnal Green*, *M.* 33 *Geo.* 2. *Burr. S. C.* 482. 2 *Bott*, 29. 1 *Nol. P. L.* 274, 275. 3*d edit.* 'A man whose settlement was not known, married a woman, who was settled in the precinct of *St. Katherine's;* they had a son born in *Bethnal Green*, which son married a woman settled in the parish of *St. Leonard*, *Shoreditch*, and had several children by her. It was argued that these children ought to follow the

acquired settlement of their mother, and not their father's, which was only a derivative one from their grandmother, who had married a *Frenchman* who had no settlement. But not allowed by the Court, who said, that there is no difference between an acquired and a derivative settlement. And the rule laid down was this: that the child's settlement follows that of its father, if its father's can be found, and that no recourse shall be had to the mother's settlement, till that of the father can be traced no further. And these children were adjudged to be settled at *St. Katharine's*.

R. v. St. Matthew's Bethnal Green.

Settlements derived from the Mother, during the Father's Life-time.

Berkhamstead v. *St. Mary, North Church, E.* 8 *Geo.* 2. 2 *Sess. Ca.* 182. 1 *Nol. P.L.* 258. 276. *3d edit.* The father ran away, and the mother went and resided on an estate devised to her. One question was, whether the children could gain a settlement, by residing with the mother on such estate, where the father had never lived? And it was held by Ld. *Hardwicke* C. J. That as it did not appear that the father was dead, the Court must suppose him to be living; and in such case the children could gain no settlement but what was derived from their father.

Father having no known settlement and run away, the child shall be settled with the mother.

Westerham v. *Chidingstone, H.* 12 *Geo.* 1. *Fol.* 252. 2 *Bott*, 77. 1 *Nol. P.L.* 258. *3d edit.* An *Englishman*, whose settlement was not known, married, had a child, and ran away: the child was then nine years of age.—By the Court: the mother and children ought to be settled where the mother was settled before marriage.

So where the father was an Irishman having no settlement.

St. Giles's v. *St. Margaret's, E.* 2 *Geo.* 1. *Fol.* 251. 2 *Bott*, 77. 1 *Nol. P. L.* 258. *3d edit.* *Sarah Etherington*, with *Dorothy* her daughter, aged five years, was removed from *St. Margaret's* to *St. Giles's*, as being the place of *Sarah's* last legal settlement before her marriage, she having married an *Irishman* who had no settlement. And it was adjudged that *Dorothy* her daughter should be settled with her mother in the parish of *St. Giles's*, where her said mother's settlement was before marriage.

So where the father was a foreigner.

Rex v. *St. Paul's, Shadwell, T.* 9 *Geo.* 1. 2 *Sess. Ca.* 113. Resolved by *Eyre* and *Fortescue* Js. that where the father being a foreigner had no settlement, the children should have the benefit of their mother's settlement; for that her right should descend to them, and they should not be sent to the place of their birth.

St. Botolph's without Bishopsgate v. *St. John's, Wapping, H.* 28 *Geo.* 2. *Burr. S.C.* 367. 2 *Bott*, 78. *& post.* A child of an *Irishman* having no settlement in *England*, and supposed to be on board a man of war in the *West Indies*, and his wife being an *Englishwoman*, was adjudged to go with the mother to the mother's settlement which she had before marriage.

Settlements derived from the mother, after the father's death.

The above are cases where the mother's settlement was given to the children during the life-time of the father. It is now to be considered how far their settlement will follow that of the mother, the father being dead.

Father dead and the mother a widow, the children will follow her settlement.

St. George's v. *St. Katherine's, E.* 1 *Geo.* 1. *Fol.* 254. 1 *Sess. Ca.* 69. 2 *Bott*, 23. 1 *Nol. P.L.* 276. *3d edit.* A man settled in *St. Katherine's*, married, and had six children born there, and died. After his death, the widow went into the parish of *St.*

St. George's v. St. Katherine's.

tlement acquired after his death.

George, with her six children, and rented a house of 12*l.* a year, and lived in it with her children four months. The single question was, whether the children should be settled where their father was last settled, or have a settlement with the mother in the parish of *St. George?* And the whole Court were of opinion that the six children were settled in the parish of *St. George*, where the mother's last settlement was. And by *Parker* C. J.: There s no distinction between the settlement of children with the father or mother; for they are as much her's as the father's, and nature obliges her, as much as the father, to provide for them; so does the law: and every argument that holds for their settlement with the father holds as to their settlement with the mother. The reason why children shall not gain a settlement where the widow gains a settlement only by intermarriage is, because it is then not her family but her husband's: and she cannot give the children any sustenance without the husband's leave. But in this case, since she is equally punishable with her husband for deserting her children, and therefore could not leave them behind her, they must gain a settlement with her.

Woodend v. *Paulspury*, *H.* 13 *Geo.* 1. 2 Ld. *Raym.* 1473. *Fol.* 256. 2 *Stra.* 746. 2 *Bott*, 24. 1 *Nol. P. L.* 276. 3*d edit.* *John Buncher* was settled at *Woodend*, and died, leaving a widow and one daughter aged fourteen years. The widow removed to *Paulspury*, into a messuage and tenement of her own for life, and took her daughter with her, and the daughter lived with her there two years. And the question was, whether the daughter gained a settlement at *Paulspury?* And it was adjudged that she did; because the mother being a widow, having gained a new settlement after her husband's death, the daughter gained a settlement also as part of her family. And there is no difference between a father's gaining a settlement and a mother's, in such cases as this; for the mother is obliged to provide for her children after her husband's death, as the father was when living; and she could not leave this daughter behind her, neither could she be removed from her.

Barton Turfe v. *Happisburg*, *T.* 8 & 9 *Geo.* 2. *Burr. S. C.* 49. 2 *Bott*, 26. 1 *Nol. P.L.* 276. 3*d edit.* *Thomas Man* hired a farm of the yearly value of 100*l.* in *Barton Turfe*, which he occupied for about three years, and died there. After his death his widow removed from *Barton Turfe* to *Happisburg*, and dwelt in a house and occupied lands there, of the yearly value of 4*l.* which were given to her by the will of her father. And *Deborah* her daughter, being then of the age of thirteen years, went and lived with her mother as part of her family, for about a year and a half. By the Court: the daughter gained a new settlement in *Happisburg*, by living with her mother there, as part of her family, upon the mother's own estate. For a child may gain a settlement under its mother after the father's death, equally as under its father whilst alive. The mother's settlement has the same effect upon the child as the father's had.

And the like was held by the Court in the case of *Rex* v. *Oulton*, *M.* 9 *Geo.* 2. *Burr. S. C.* 64. 2 *Bott*, 28. 1 *Nol. P.L.* 276. 3*d edit.*

Intermarrying with a second husband, will not change the settlement of

Wangford v. *Brandon*, *M.* 10 *W. Carth.* 449. 2 *Salk.* 482. *Burr. S. C.* 3. 2 *Bott*, 23. Three poor men of *Wangford* came into the parish of *Brandon*, and there married three poor widows of *Brandon*, who received relief from the said parish; each of

which widows had children by their former husbands, some under seven, some above seven years of age. It was holden that the children did not gain a settlement in *Wangford*, nor were removeable thither, to charge that parish. As to the nurse children, they indeed might be sent thither for nurture only; yet still the parish of *Brandon* must relieve them there, and not the parish of *Wangford*. But the children above the age of seven years ought not to be removed at all, being settled inhabitants in the parish of *Brandon*; and the removal of the mother shall have no influence on the settlement of their children.

Wangford v. Brandon.

the children by the first marriage.

In the case of *Cunmer* v. *Milton*, (*ante*, p. 285.) it was said that if after the death of the father, the mother marry again to a husband who is settled in another parish; her children, such of them as are above seven years old, shall not be removed; those under shall be removed, but that only for nurture, for they shall be kept at the charge of the other parish, where their father whilst living was settled; and to that parish they may be sent after seven years old, as to the place of their lawful settlements; for this is an accidental settlement of their mother, which was only by the marriage with the second husband, and as she is now become one person with him, shall not gain a settlement for her children.

St. Giles's in the Fields v. *St. Clement's*, *T.* 6 & 7 *Geo.* 2. *Burr. S.C.* 2. 2 *Bott*, 24. 1 *Nol. P.L.* 276. *3d ed.* *Jacob Maile*, the pauper, was an infant of nine years of age. His father's settlement was not known: his mother's settlement before their marriage was known: his father died: his mother married a second husband, who had a settlement; and she consequently gained a new settlement by this second marriage. By the Court: *Jacob Maile's* settlement is where his mother was last settled before her marriage with *Jacob's* father; the new-gained settlement of his mother not being gained in her own right, but only in right of her second husband. And in this case the Court agreed, that where children are sent with their mother for nurture, they are to be supported at the expence of the parish where their legal settlement is.

Of Emancipation.

Eastwoodhay v. *Westwoodhay*, *T.* 7 *Geo.* 1. 1 *Stra.* 438. 2 *Bott*, 31. 1 *Nol. P.L.* 282. *3d edit.* Upon appeal from an order of two justices, for the removal of *Robert Baker* from the parish of *Westwoodhay* to the parish of *Eastwoodhay*, the sessions stated for the opinion of the Court: That forty years since, *Thomas Baker*, the father of the pauper, was seised in fee of a freehold estate in the parish of *Hampstead Marshall*, where he lived till the year 1697, and had his son, the pauper, who was at that time eight years old; that in 1697, *Thomas*, the father, and all his family removed to *Chevely*, where he rented a tenement of 20*l.* a-year, for two years: that in 1699 he purchased a copyhold estate of 11*l.* a-year in the parish of *Westwoodhay*, whither he removed with his son and servants, and served churchwarden and other parish offices, and paid taxes, and staid there till the year 1716: that in 1716 he purchased a cottage of 1*l.* 12*s.* 6*d.* a-year in *Eastwoodhay*, and went and lived upon it till his death; but *Robert* the son staid behind in *Westwoodhay*, where he married a wife, and had worked

A son is emancipated from the father, by the father's separating from the son, (by removing to another parish,) and the son remaining behind and marrying; and the son's settlement will be in the parish, where he and his father last lived together, while the father gained a settlement there.

Eastwoodhay v. Westwoodhay.

ever since on his own account, and that he is thirty years old. The sessions confirmed the order of removal. It was moved to quash the order of sessions, for that the settlement of *Robert* the son was either at *Hampstead Marshall*, where he was born, and where he lived till eight years old; or if it should be carried so far as that he gained a new settlement with the father, by removing with him as part of his family, according to the case of *Cunmer* v. *Milton*, (*ante*, p. 285.) yet they could carry him no farther than *Westwoodhay*, which is the last place to which he accompanied his father. On the other hand it was insisted, that let the son be of what age he will, he shall follow the settlement of his father, till he gain one by his own acquisition; and it appearing he had never done any thing to gain a settlement by act of his own, either in *Hampstead Marshall*, *Chevely*, or *Westwoodhay*, then he must follow the settlement of the father as well in *Eastwoodhay* as in any of the rest. *Pratt* C. J. The question is not, where this man and his family are settled, but whether there appears a settlement of him in *Eastwoodhay?* If he had gone thither with his father, as part of the family, possibly it might have been a settlement of him there: but by staying behind, he was divided from his father, and therefore there is no colour to make it a settlement in *Eastwoodhay*. I think his settlement is in *Westwoodhay*, which was the last place where he lived as part of his father's family. To which the rest of the Court agreed: and the order was quashed.

A son at nineteen, leaving his father and going into another parish and marrying, is emancipated, and his children can derive no settlement from their grandfather.

St. Michael's Coslany in Norwich v. *St. Matthew's in Ipswich*, *E.* 2 *Geo.* 2. 2 *Sess. Ca.* 129. 2 *Stra.* 831. 2 *Bott*, 32. 1 *Nol. P.L.* 283. 3*d edit.* Two justices made an order, to remove *Edmund Williams*, *Anne* his wife, and *Edmund*, *Solomon*, and *Amy*, children of the said *Edmund* the father, from the parish of *St. Michael* in *Norwich*, to the parish of *St. Matthew* in *Ipswich*. Upon an appeal to quash the order, the sessions stated the following case: That *Edmund Williams*, the grandfather, was settled at *Shepton Mallet* in *Somersetshire*; and afterwards removed to *Bruton* in the said county, and had a writing given him from *Shepton Mallet*, acknowledging his legal settlement to be there; by virtue of which he continued at *Bruton* for twenty years, where *Edmund* the son was born; and that he continued there with his father till he was nineteen years of age, and was bred up to his father's business of a woolcomber. Then *Edmund* the son left his father, and came to *Norwich*, and there he married two wives; by the first he had *Edmund* the grandson; and ten years after his wife died. Then he married *Anne* his now wife; by whom he had *Solomon* and *Amy*, two other children; since whose birth, about two years ago, *Edmund Williams* the grandfather, gained a new settlement at *St. Matthew's*, *Ipswich*: but *Edmund* the son hath never lived with his father at *Ipswich*, or any where else, since he lived with him at *Bruton*. The question was, whether the persons removed should follow the settlement of the grandfather at *Ipswich*; or whether they should not be looked upon as separated from the grandfather's family, especially after so long an interval of time. Mr. J. *Reynolds*: I do not see how the father can gain a settlement for the son so many years after the son has left him. Ld. C. J. *Raymond*: I think it is odd, that an old man of 60, who has left his father for 40 years, shall follow the settlement of his father as often as his father removes. In the case of

young children it is otherwise; for they cannot be severed from their parents because of nurture. And *per Cur.* The reason why we enquire into the ages of children is, because if they are grown up, and above seven years old, they may gain a settlement by their own act: but it is almost a contradiction in terms to say, that a man, who has left his father forty years, shall follow the settlement of his father.

St. Michael's Coslany in Norwich v. St. Mathew's in Ipswich.

Bugden v. *Ampthill*, *H.* 21 *Geo.* 2. *Burr. S. C.* 270. 2 *Bott*, 33. 1 *Nol. P. L.* 278. 282. 3*d edit.* *J. G.* the father of *T. G.* the pauper, came by certificate from *R.* to *A.* They remained together at *A.* under the certificate, till *T. G.* the pauper came of age. Then *T. G.* the pauper, being upwards of 21 years of age, married in *A.* and left his father, and lived there with his wife and children, distinct from his father, till removed by the present order. Three years after the marriage of *T. G.*, the father removed from *A.* to *B.* and there gained a settlement, but neither *T. G.* the pauper, nor his wife, nor any of his children, ever lived there. It was argued that the last settlement of the father would be the legal settlement of the son, unless the son had gained a new settlement of his own. *Contra*, it was said, that as the son did not live with his father at *B.* he could not gain any settlement there, being no part of his family; and the rather, because he had an independent and distinct family of his own at another place. And of that opinion was the Court, who held that "*the pauper ceased to be part of his father's family, upon his marrying and living separate and distinct from his father.*"

Marriage and separation from the father, amounts to emancipation.

In *Rex* v. *Heath*, *E.* 34 *Geo.* 3. 5 *T. R.* 583. 2 *Bott*, 614. 1 *Nol. P. L.* 282. 3*d edit.* Which was a question of settlement by certificate; it appeared that the son of the certificated person married, and lived separately from his father, and it was adjudged that such a person ceased to be part of his father's family, when he married and lived separate from his father.

Marriage and separation.

In *Rex* v. *Mortlake*, *E.* 45 *Geo.* 3. 2 *Bott*, 619. 1 *Nol. P. L.* 278. 3*d edit.* The like point was determined. (See this case fully, *post*, tit. Certificate.)

Rex v. *Everton*, *T.* 41 *Geo.* 3. 1 *East*, 526. 2 *Bott*, 52. 1 *Nol. P. L.* 278. 3*d edit.* The pauper's father being legally settled in *E.* resided there from 1779 to 1790, with his family, including the pauper. In 1782, the pauper, being 22 years of age, married, still living in the family of the father as part of it; in 1783 his wife died. The pauper still continued with his father. In 1790 he removed with his father to *Great Barford*, and while the pauper continued there with the father, the father acquired a settlement there. In 1796 the pauper married again, still continuing with his father, and had children, but he gained no settlement in his own right. The pauper and his family were removed from *G. B.* to *E.*, and the sessions affirmed the order; considering that the pauper was emancipated by the first marriage. And Ld. *Kenyon* C. J. said, that after his marriage he could not follow a newly acquired settlement of the father; and the order was affirmed.

Marriage and no separation: marriage by the son, is of itself an emancipation, although he continue to reside with his father's family.

Rex v. *Sowerby*, *E.* 42 *Geo.* 3. 2 *East*, 276. 2 *Bott*, 617. 1 *Nol. P. L.* 278. 284. 3*d edit.* *R. Murdock* and his children, by name, were removed from *St. Mary* to *Sowerby*, which order the sessions confirmed on appeal, and stated the following case: That

If there be no marriage, the son's carrying on business for

R. v. Sowerby.

himself, will not constitute an emancipation, if he live with his father's widow, as part of her family.

Rd. Stokell went with a certificate from *D.* to *Sowerby*, and there had a son born: *R. S.* died, and the son, being arrived at manhood, followed his father's business at *Sowerby*, hiring servants for it, but living with his mother in a house which she hired and rented after his father's death. She had no concern with the business. The pauper was during this time, and ten years after the father's death, engaged by the son as his servant, and continued so for eleven years, and during that time was hired by him for a year and served the time. — The main question was, whether the son was or was not emancipated? — Ld. *Ellenborough* C. J. said that here was nothing like emancipation; that while the father was living, the son resided under his roof, and after the father's death he continued to reside with his mother, who was the representative of the father, and equally protected by the certificate: and this brought it within the case of *Rex* v. *Hampton*. (The remainder of his lordship's judgment then proceeded upon the question of certificate, which see, *post.*) Order of sessions quashed.

N. B. It was also stated in the case that the son sometimes went away for a few weeks at harvest.

A son enlisting for a soldier and being absent for four years, and then returning to his father, is emancipated.

Rex v. *Walpole St. Peter's*, *E.* 9 *Geo.* 3. *Burr. S. C.* 638. 1 *Blac.Rep.* 669. 2 *Bott*, 35. 1 *Nol. P.L.* 283. 3*d edit.* The pauper being settled at *Outwell* as part of his father's family, enlisted himself for a soldier, and continued in the service four years; after his discharge, he came home to his father, who had removed from *Outwell*, and then lived at *Walpole*, and rented and occupied a farm there of about 50*l.* a-year, and continued there with his father about twelve or fourteen weeks; and afterwards worked at different places as a labourer, till he was removed by order of two justices from *Wisbech* to *Walpole* aforesaid. The sessions, upon appeal, confirmed the order. It was moved to quash both these orders, for that the pauper's legal settlement was at *Outwell*; which was the place of his father's settlement at the time of the pauper's leaving his father's family, and consequently the pauper's own derivative settlement. The son, by enlisting himself for a soldier, and continuing four years in the service, became emancipated from his father's family; and not having gained any subsequent settlement for himself, must resort to his old derivative settlement at *Outwell*; and could not, after such an emancipation from his father's family, gain a settlement at *Walpole St. Peter's*, where his father had newly and subsequently gained a settlement, but had none there when the son left him and ceased to be part of his family. And a rule was made to shew cause. Which rule was made absolute, without defence. And both the orders were quashed.

A pauper, being eighteen years of age, and residing with his father, was drawn as a militia man, and served for five [years as a bal]lotted man. During his service, he several

Rex v. *Hardwick*, *M.* 2 *Geo.* 4. 5 *B.* & *A.* 176. Removal from *Stanton Harcourt* in *Oxfordshire*, to *Hardwick*, in the same county. Order confirmed at the sessions, subject, &c. Case: — The pauper was born in the parish of *Hardwick*, and resided there as a part of the family of his father, who was a settled inhabitant of that parish. In the year 1807, when the pauper was 18 years of age, he was drawn for the *Oxfordshire* militia, and served therein for five years as a ballotted man; the regiment, during the whole of that period, being embodied and in actual service. He joined the regiment in 1808, and in the year 1809, having obtained

a furlough for three weeks, he returned to the house of his father, who was still residing at *Hardwick*, and lived with him for about a fortnight. In the year 1811, the pauper obtained a second furlough for a fortnight, and went again to his father's, who had removed to, and was then residing in the parish of *Stanton Harcourt*, where he remained for about twelve days. The pauper was discharged from the militia in the year 1813, when he returned to his father in *Stanton Harcourt*, who gave him lodgings in his house till his marriage. After the pauper's return from the militia, and before his marriage, his father gained a settlement in *Stanton Harcourt*. — After argument, *Abbott* C. J. The rule of law is, that every new settlement acquired by the parent is communicated to the children so long as they remain members of his family; and the question in this case is, whether at the time when the father gained his settlement in *Stanton Harcourt*, this pauper remained a member of his family. Now, during the minority of the child, he will remain almost under any circumstances unemancipated; but where the new settlement is acquired by the parent after the child has attained 21, it will not be communicated unless in fact the child continues part of the family. Where, therefore, at that period he is absent, employed in gaining a livelihood for himself, or serving, as in this case, in the militia, I think he no longer remains a member of the family. In the present case, I think that the sessions have come to a right conclusion, in deciding that the last legal settlement of the pauper was at *Hardwick*. — *Bayley* J. If a child be separated from his father's family, and does not return till after 21, he ceases to be a member of that family, and consequently his settlement will not, after 21, shift with that of his father. I think, therefore, that the sessions are right, and that this case is hardly distinguishable from *Rex* v. *Walpole St. Peter's*. (*Burr. S. C.* 638.) — *Holroyd* J. The distinction between a compulsory and a voluntary separation seems to me to be immaterial. The case must follow the same rule as *Rex* v. *Walpole St. Peter's*. Order of sessions confirmed.

R. v. Hardwick.

times, when on furlough, and, finally, after his discharge from the militia, returned to his father's house: Held, that by his so remaining separated from his father's family after twenty-one, he was emancipated, although the original separation was not voluntary on his part.

Rex v. *Stanwix*, *T.* 34 *Geo.* 3. 5 *T. R.* 670. 2 *Bott*, 45. 1 *Nol. P.L.* 283. 3*d edit.* *Jane* and *Isabella Campbell*, both widows, and the five children of *Isabella*, were removed from *St. Mary's Carlisle* to *Stanwix*, both in *Cumberland*. The sessions confirmed the order, subject to the opinion of the court of K. B. on the following case: *Jane* (who is since dead) was the widow of *Alexander Campbell* a *Scotchman*: *Isabella* is the widow of *William Campbell*, who was the legitimate son of *Alexander* and *Jane*; and the five children are the legitimate children of *William* and *Isabella*. *Alexander* became seized of a messuage and tenement in *Stanwix* by descent, upon which he resided upwards of a year, about the years 1774 and 1775. Some time before, and until the premises in *Stanwix* descended to *Alexander*, he resided at *Glasgow* in *Scotland*, where *William*, about nineteen years of age, enlisted and left his father's family in *Glasgow*, which was some years before the above premises descended to his father. *William*, after having been for some time beyond the seas as a soldier, returned to *England* about thirteen years ago, (his father being then dead,) and married the pauper *Isabella* at *Plymouth*, and went beyond sea again as a soldier, and at the end of two years returned again to *England*; and about ten years ago he came to *Rickergate* quar-

Where the son inlists as a soldier and thereby puts himself under the control of others, it is an emancipation.

R. v. Stanwix.

ter, an adjoining township to *Stanwix*, where he lived six years, and then removed into *St. Mary's* aforesaid, where he lived four years, but never acquired any settlement by any act of his own. *Alexander* sold part of the estate in *Stanwix* in his life-time, and resided upon the residue, consisting of a house and garden of the yearly value of 2*l.* 5*s.* till his death, which premises he devised to *Jane* his wife for life, and after her death to *William* his son, his heirs and assigns for ever. But *William* never became possessed thereof, nor resided thereon, having died in the life-time of *Jane*, who, after her husband's death, continued to reside upon the premises for several years, when she removed to her son in *St. Mary's* aforesaid, about four year's ago, and continued to live with him there till his death, and afterwards with his widow, until *Jane* herself died in *January* last. And it being urged in argument, that in *Rex* v. *Cold Ashton* (see *post*, § xi.), it was said, that a child cannot be emancipated unless he has gained a settlement of his own; for that until that time the derivative settlement of his parents is not abandoned. — Ld. *Kenyon* C. J. said, that means as long as the son continues a part of his father's family. But here the son was emancipated when the father acquired a settlement in *Stanwix*; he had ceased to be a part of his father's family some years before, and had put himself under the control and government of others; and it is immaterial whether or not he had gained a settlement for himself. The case of *Rex* v. *Walpole* (*ante*, p. 294.), where the son had enlisted himself as a soldier, was considered so clearly to be the case of an emancipation, that it was not even argued. Both orders quashed.

The being in the militia, and serving in it, is not, of itself, an emancipation.

Rex v. *Woburn*, *H.* 40 *Geo.* 3. 8 *T. R.* 479. 2 *Bott*, 50. 1 *Nol. P. L.* 281. 284. 441. 3*d edit.* *J. Williams* the father of *T. Williams* the pauper, previous to 1756 was settled with his family at *Leighton Buzzard*. The pauper was born there in 1756. In 1763 *J. W.* with his family (including *T. W.*) removed to *Woburn*, and there he gained a settlement in 1774. In 1772 the pauper entered into the militia, with the consent of his father, then a serjeant in the same regiment; the pauper continued therein a drummer till he was 23 years of age; during which time his pay was received by his father. From the time of the pauper's entering into the militia till he married (1788), he lived in his father's family, when not upon duty. He was removed from *L. B.* to *Woburn*, and the sessions affirmed the order. — *Per* Ld. *Kenyon* C. J. The argument that has been used in support of the present rule, if it proves any thing, proves too much; for it tends to show that if a child be for any period of time, however short, under any other control than that of the father, he is thereby emancipated from his father's family. That is the case of every private in the militia, even in time of peace; he is subject to military control during a part of the year, and therefore not under the father's control during that time; and yet it was not contended that such a person is by that means emancipated. A drummer is generally taken at a very early period of life, and if he only continue in that situation for 24 hours, he is, it is said, emancipated from his father. The proposition is monstrous. In *Rex* v. *Walpole St. Peter's*, (*ante*, p. 294). the court proceeded on this ground, that he was engaged to serve for life, and was liable to be sent into foreign countries. But a son is not emancipated by the circumstance

of his being under some other control than that of his father. As in *Rex* v. *Halifax*, (*infra*,) I am therefore of opinion that this pauper was not emancipated from his father at the time when the latter gained a settlement at *W.* — *Grose* J. Of the same opinion, as it appeared that he was only 16 years of age when he entered; that he did so with his father's consent, a serjeant in the same militia; that his father received his pay: and that till he married he lived in his father's family. — *Le Blanc* J. said, that in *Rex* v. *Walpole St. Peter's*, the son was totally independent of his father for four years.

R. v. Woburn.

Neither is the being under the control of another person, an emancipation.

Rex v. *Halifax*, *H.* 15 *Geo.* 3. *Burr. S. C.* 806. 2 *Bott*, 36. 1 *Nol. P.L.* 280. 3*d edit.* *John Bragg*, the father of the pauper, went with a certificate from *Skircoat* to *Halifax*, where the pauper was born. And when he (the pauper) was about 15 years of age, he bound himself an apprentice by indenture to *William Smith* of *Halifax*, stuff-weaver, for the term of four years, and served his master there for that time. After he was out of his apprenticeship, and when he was about 19 years of age, his father took a farm of 12*l.* a-year in *Warley*, and went and resided there several years: His son, the pauper, always after the father went to *Warley*, worked about the country as a stuff-weaver, but came to his father at *Warley* when he pleased, and kept his holiday clothes there, and considered his father's house as his own home: When he came to his father's house, he paid for what he had, and was his own master to go and work for himself whenever he pleased. — Ld. *Mansfield* C. J. was not in court. — The other three judges thought that the son could not be considered as emancipated, or independent of or separated from his father. He went to his house when he pleased, and had his clothes there. Mr. J. *Aston* said, that where a son is become independent of his father's family, or emancipated from it, he would not acquire a settlement where his father goes to reside: But if he remains part of his father's family, he will acquire a derivative settlement where his father goes and settles. The distinction was well laid down, he said, in the *Bugden* case; and he observed that in the above case of *Walpole St. Peter's*, the son had been four years a soldier, and was emancipated from his father's family, and had ceased to be part of it.

A son nineteen years of age, treating his father's house as his home, and so considering it, is not emancipated, though he goes about the country working for himself.

Rex v. *Tottington Lower End*, *E.* 23 *Geo.* 3. *Cald.* 284. 2 *Bott*, 37. 1 *Nol. P.L.* 279. 3*d edit.* *Edward Holt* and his wife and family were removed from *Broughton* to *Tottington Lower End* both in *Lancashire*. The sessions confirmed the order, and stated, that the pauper was the son of *Thomas Holt*, who at the time of the pauper's birth was settled in *Tottington Lower End*. When he was seven years old his mother died, and he and his father went to live with his uncle *Edward Holt* in the township of *Pilkington* in the same county; his father boarded; but his uncle, *out of charity* to his father, who had four other young children, and to keep him off the town, *took the pauper* and provided for him, meat, drink, lodging, and clothes; in about 18 months his father went to reside in *Ratcliffe*, an adjoining township, but the pauper continued with his uncle till he was ten years old, about which time his uncle's wife beat him (his uncle being from home), and *he went to his father's house* and stayed there about a fortnight: but *his father* not having a loom to accommodate him as a weaver,

Residence of a child by his father's direction at a friend's house for support, the child visiting his father's house occasionally as his home, is not an emancipation.

R. v. Tottington Lower End. *desired him to return* to his uncle, which he did, and his uncle taught him to weave in the day, and sent him to school in the evenings; his uncle provided him with meat and clothing, and received the money he earned; he stayed with his uncle on these terms until he was 16 years old; but from his first going to his uncle to that time, he now and then went to see his father at a holiday time or so, and sometimes stayed all night. When he was 14 years old, his father came into *Pilkington*, and gained a new settlement there by renting 15*l.* a-year. The pauper considered his father's house as his proper home, because he was his father; and that he could have gone to him when he pleased, and his father would have received him. The father thought himself obliged to provide for the pauper whenever the uncle turned him away; and when he was 16 years of age, having been struck by his uncle, *he told him he would leave him and return home to his father;* his uncle said he might; upon which *he went* to his father and told him the circumstances. *The father* said he was liable to take him in, and *did receive him as part of his family;* he stayed with his father about a week, and helped him to get his hay; and when that was done, his father, not having a loom, *desired him to return* to his uncle, and see if he would take him in. *He did* return, and agreed with his uncle to work for himself, and pay for his board; and it did not appear to the sessions he ever returned to his father. Some time after his last return to his uncle, having taken 2*s.* 6*d.* or more of him, his father gave his uncle 2*s.* 6*d.* as amends for the same. The pauper had done no act to gain a settlement in his own right. The father says, if the uncle had gone to live a great distance from him, he would not have suffered the pauper to have gone with him. — Ld. *Mansfield* C. J. The pauper considered himself as part of his father's family, and the father considered him the same. When a man acquires a settlement, he acquires it for himself and his family. There is no reason to say this boy was not a part of his father's family. The uncle was under no obligation to do any thing for him, or to keep him an hour: and the boy in point of fact on every disagreement went to his father's house as his home, and he received him, as he was bound to do. I see no ground for considering this as an emancipation. Both orders quashed.

Rex v. *Offchurch, H.* 29 *Geo.* 3. 2 *T. R.* 114. 2 *Bott,* 40. 1 *Nol. P.L.* 279. *3d edit. Henry West* and *Martha* his wife were removed from *Thurlaston* to *Offchurch* both in *Warwickshire*. The sessions confirmed the order. The case stated (amongst other things), that the pauper was born in *Offchurch* in 1765, and resided there with his father until 1770. On his father's leaving *Offchurch*, the pauper was left with one *Leeson*, at *Offchurch*, to be taken care of, his father paying for his lodging and board. The pauper continued at *Leeson's* at *Offchurch* for two years, and then went to reside with his uncle *Haddon*, who also lived at *Offchurch*, and continued to reside with him about two years, during which his uncle provided him with board, clothes, lodging, and pocket-money, and he worked with his uncle, but received no wages, and was not hired as a servant. At the end of two years the pauper went to his father's at *Ladbroke*, and stayed there a week; and then went to reside with another uncle, *Salmon* of *Weston*, with whom he lived six years as he had done at his uncle *Had-*

don's. His uncle *Salmon* provided him with board, clothes, lodging, and pocket-money, he working for *Salmon* without having been hired as a servant, or receiving any wages. On leaving his uncle *Salmon* he went and lived three weeks with his father at *Ladbroke*, where his father had obtained a settlement. The pauper had never done any act to gain a settlement. — Ld. *Kenyon* C. J. This is the weakest case of emancipation that ever was attempted to be made out. When the father left the parish of *Offchurch*, the son was only five years old; now it cannot be pretended at that time he was emancipated, and yet he then ceased to reside in his father's family. It is also stated, that about two years afterwards, when he was about seven or eight years old and past the age of a nurse-child, he went to live with his uncle *Haddon*. Then was he emancipated at that time? *Ordinarily speaking, one of these things must happen before the son can be said to be emancipated: either he must have obtained a settlement for himself, or have become the head of a family, or at most he must have arrived at that age when he may set up in the world for himself.* But here the son does not fall within either of those descriptions: no time can be stated when the emancipation may be said to have commenced. For when he went to live with his uncle *Haddon*, he was only eight years old at the most; and he could gain no settlement either by living with that uncle, or his other uncle *Salmon* as a servant, because the case states that he was not hired as a servant by either of them. Now during all this time the father had a right to the custody of the son, and might have obtained him by *habeas corpus*, for the parental care was not then done away. It is not necessary in these cases of derivative settlements that the child should remove with the father from place to place, for the settlement of the father will be communicated to the child: otherwise children who are sent out into the world for education, and are of course separated for a time from the father, might lose the benefit of their father's settlement; and when they were about to return home, would find themselves excluded from parental care, if their parents had in the mean time gained a new settlement. How long the power of communicating a derivative settlement may continue it is not necessary to determine; for in this case it certainly remained longer than till the child was nine or ten years old, and that is sufficient for the determination of this question. Both orders quashed.

R. v. Offchurch.

The rule for emancipation.

Father a right to the custody of his son under twenty-one.

Rex v. *Edgeworth*, *T.* 29 *Geo.* 3. 3 *T.R.* 353. 2 *Bott*, 42. 1 *Nol. P.L.* 280. 3*d edit.* *Henry Rothwell* and his wife and family were removed from *Castleton* to *Edgeworth*, both in *Lancashire*. The sessions confirmed the order and stated the following case: that *Henry Rothwell*, the father of *Henry* the pauper, when the pauper was about 13 or 14 years old, came to live upon a tenement at *Edgeworth* of 5*l*. a-year, and had no settlement there, and resided there about two years; during which time he put out the pauper to one *James Pollit* who then resided in *Spotland*, for four years, to learn the trade of a woolcomber. The pauper accordingly left his father's house, to which he never afterwards returned but as a guest, and resided with and worked for *Pollit* at *Spotland* for four years; and by him was provided all that time with meat, drink, washing, lodging, and clothes, and was con-

Child bound apprentice by a void indenture; and gaining no settlement thereby, is not emancipated.

R. v. Edgeworth.

sidered by his mother as part of *Pollit's* family. During these four years the pauper was sometimes a quarter or half a year without seeing his father or mother, but sometimes came to his father's house on a *Saturday* evening, and returned home to his master's either on the *Sunday* evening or *Monday* morning following. After the expiration of the four years he never returned to his father's family, but worked at his trade of a woolcomber at different places about the country, and supported himself thereby until he married, and resided with his wife and family in a house of his own. After the pauper was put out to *Pollit,* and before the four years expired, *Henry* the father took another tenement in *Edgeworth* of the yearly value of 8*l.* which he occupied with the former tenement for a-year, whereby he gained a settlement at *Edgeworth.* The pauper never gained any settlement for himself; nd the question is, whether he followed his father's settlement at *Edgeworth?* This case was sent down to be re-stated, whether the pauper had been apprenticed to *Pollit by indenture.* The sessions returned that the pauper had been put out *apprentice by indenture,* which was void for want of the stamp denoting the payment of the additional duty.—— The Court thought this case governed by the preceding case, and (without argument) discharged the rule for quashing the order of sessions.

A child is not emancipated till he has gained a settlement in his own right, or has contracted a relation incompatible with that of a component part of his father's family; and a person at the age of nineteen, (his father having run away,) hiring himself for four years, and not gaining a settlement thereby, is not emancipated.

Rex v. *Witton cum Twambrookes, T.* 29 *Geo.* 3. 2 *T. R.* 355. 2 *Bott,* 43. 1 *Nol. P. L.* 277. 279. 3*d edit. George Hewitt* and his wife and family were removed from *Stockport* to *Witton cum Twambrookes.* The sessions confirmed the order, and stated the following case; That the pauper's father, *John Hewitt,* rented a tenement of 16*l.* a-year in *Witton,* &c. and resided upon it above a year, when the pauper was about six years old. The father then went to *Middlewich,* where he did no act to gain a settlement; and about two years after ran away from his family; and the pauper's mother, taking the pauper with her to *Congleton,* died in half a year: then the pauper was left in the care of one *Jane Brookes,* with whom he lived at *Congleton,* and worked at the silk mills there. And the overseers of *Witton,* &c. paid the whole or a part of his maintenance for four years to *Jane Brookes,* after which the pauper supported himself to the age of 16, at which time he got 3*s.* 9*d. per* week, and boarded himself where he liked. During the first part of the time he lived at *Congleton,* he saw his farther twice at the distance of about four years, at which time his father did not give him any thing (except a pair of breeches, and 2½*d.* the first, and 1½*d.* in money the second time). At 18 or 19 years of age, the pauper went from *Congleton* to *Sheffield,* and hired himself for four years, but gained no settlement thereby. He heard that his father had been to enquire after him at *Congleton,* and that he then lived at *Dunham,* to which place he went to see him, and was at that time 23 years of age, and married. It appeared that the father had made the above enquiry of his daughter, the pauper's sister, with intent, as he said, to give him a suit of clothes, as he had done less for him than any of his other hildren. It appeared that the father had married a second wife, nd held a tenement in *Dunham* of 11*l.* a-year; and he had lived pon it eight years when his son went to see him there as above, pon which visit he staid only one hour, and never saw his father t any time but as above. Ld. *Kenyon* C. J. said, it was never

conceived in any case, that a son who was only 16 years of age, and who had not gained any settlement in his own right, was not part of his father's family. The cases of emancipation have always been decided on the circumstances either of the son's being 21, [see *Rex* v. *Roach, post.* p. 302.] or married, or having gained a settlement in his own right or (as in the case of the soldier) having contracted a relation which was inconsistent with the idea of his being in a subordinate situation in his father's family. Order confirmed.

Rex v. Witton cum Twambrookes.

Rex v. *Bleasby, H.* 60 *Geo.* 3. and 1 *Geo.* 4. 3 *B.* & *A.* 377. Removal from *Bleasby* to *Thurgarton* in *Nottinghamshire.* The sessions on appeal discharged the order, subject to the opinion of the Court of K. B. on the following case. The pauper was born at *Gonalstone*, the place of his father's settlement, in *June*, 1785; and at *Martinmas*, 1798, being then thirteen years of age, was hired and served for a year with *James Hind*, of *Gonalstone* aforesaid, farmer. When the pauper was about sixteen years of his age, his father gained a settlement in *Thurgarton* by renting a tenement of the yearly value of 10*l.* on which the father continued to reside during the remainder of the pauper's minority, and the pauper continued during such period (that is, from about two years after the expiration of his service in *Gonalstone*, until he was 21 years of age,) to reside in his father's house at *Thurgarton*, working during the time as a journeyman framework-knitter, and occasionally paying part of his earnings to his father who was a labourer as a compensation for his board. The sessions being of opinion, that the pauper had gained a settlement in his own right in *Gonalstone*, by the hiring and service, and that the settlement gained about two years afterwards in *Thurgarton*, by the pauper's father, did not vary or affect the settlement of the pauper, discharged the order. After argument *Abbot* C. J. said, I take it to be settled law, that if a child acquire a settlement of his own, although he may afterwards, during his minority, return and live with his father's family, he does not follow the settlement of his father subsequently obtained. In this case the pauper did acquire a settlement by the hiring and service in *Gonalstone*, and after that time he derived his settlement no longer from his father, but from the contract of hiring. Order confirmed.

Emancipation by a child's gaining a settlement in his own right in the parish in which he was previously settled by parentage.

Rex v. *Collingbourn Ducis, H.* 31 *Geo.* 3. 4 *T. R.* 199. 2 *Bott*, 44. 1 *Nol. P. L.* 280. *E. Chandler* and his wife were removed from *Collingbourn Ducis* to *Collingbourn Kingston.* The sessions quashed the order, and stated the following case: *E. Chandler* was born in *Collingbourn Kingston*, where his parents were residing under a certificate from *Froxfield.* At the age of 19 he was hired for a year to serve *J. Childs* of *Buckholt Farm*, as a carter, which he served accordingly. *Buckholt Farm* is extra-parochial; is not a township or vill, and has no parish officers. After the pauper had served the year at *Buckholt*, he returned to *Collingbourn Kingston*, and then being unmarried, under age, and not having done any act to gain a settlement in his own right, further than as aforesaid, was hired to, and served *S. Andrews*, of that parish, for a year. The sessions being of opinion that the pauper was not emancipated, and that the certificate was not discharged so as to enable him to gain a settlement in *Collingbourn Kingston* by hiring and service, quashed the order of removal. By

A son leaving his father's family at nineteen, and serving a year, under a hiring for a year, but gaining no settlement thereby, and returning before twenty-one is not emancipated.

R. v. Collingbourn Ducis.

Ld. *Kenyon* C.J. (after observing upon the certificate;) In cases of this kind, where the decisions of this Court are to guide the judgments of the magistrates, it is of great importance that they should be consistent. Now I am not able to distinguish this case from the principle laid down in *Rex* v. *Witton cum Twambrookes* (*ante*). It was there held that a person under age, who after being absent from his father's family for a considerable time, returned to it before he was an adult, or married, and before he had acquired a settlement for himself, was not emancipated, but was entitled to the benefit of his father's settlement. So in this case the son returned before he had attained the age of 21, not having gained any settlement for himself distinct from that of his father, nor having become the head of a family, and therefore this case must be governed by that of *Witton cum Twambrookes*. The distinction which has been attempted to be taken between some of the former cases and the present, that here the son put himself out to service, is not material; for until the age of 21, not having done either of the acts above alluded to, he continued a part of his father's family. Order of sessions confirmed.

If a son at sixteen, hire himself for a year, and serve that year, he nevertheless cannot be considered as having been emancipated from the very moment of the hiring.

And in *Rex* v. *New-Forest*, *H.* 34 *Geo.*3. 5 *T.R.* 478. 2 *Bott*, 182. 1 *Nol. P.L.* 303. 3*d edit.* On Old *Martinmas-day* 1777, *E. Coates* hired himself for a year to *G. Bowe*, of *New Forest*, and served that year there: on the 22d *December*, 1777, *E. Coates* married his present wife: *William Coates*, a legitimate son of his by a former wife, being within one month of the age of 16 years, and having gained no settlement in his own right, on the same *Martinmas-day*, 1777, hired himself for a year to *R. Nelson* of *Ellerton*, which he accordingly served. And the question was, whether by reason of the service and settlement thereby gained by the son under his hiring, the father could be considered as being an unmarried man, by the emancipation (which it was contended was by relation at that moment complete) of his son? Ld. *Kenyon* C. J. (after reciting the statute of 3 *W.* & *M. c.* 11. § 6. *viz.* that if any unmarried person *not having a child or children*, &c.) said, that in this case the son was not separated from the father; when the father was hired, the son had gained no settlement for himself; he indeed did on the same day enter into a contract which might or might not have been completed, and which, when completed, would confer a settlement on the son; but at the time when the father entered into the relation of servant at *New Forest*, the son formed a part of his family. (See this case, *post.* § viii.)

Emancipation commences from the termination of the service.

Where a person being twenty-one, removes from her father's house, and goes as servant for eight weeks, and then returns to, and continues with him, it is an emancipation.

Rex v. *Roach*, *E.* 35 *Geo.* 3. 6 *T.R.* 247. 2 *Bott*, 46. 1 *Nol. P.L.* 278. 282. 284. 3*d edit.* The sessions for *Cornwall* confirmed an order for the removal of *Eliz. Rounsavel* from *St. Columb Major* to *Roach*, and stated the following case: The pauper was born in *Little Colan*, where her father then resided; he afterwards lived in *Roach* and gained a settlement there, and the pauper lived with him until after she was 21 years of age; when she was 22 years old, she was delivered of a bastard child, for the maintenance of which a bond of indemnity was given to *Roach*, and she continued still living with her father. About half a year after, she left her father's house, and went to Mr. *Henwood's*, a farmer in *Roach*, as a wet-nurse, and lived there eight weeks, for which she was paid 8*s*. A few days after she left her father's

house, he removed to *St. Columb*, where he rented 12*l.* a-year, and has lived there from that time; at the end of the eight weeks, the pauper returned to her father in *St. Columb*, where she has since remained, but made no contract with him as a servant, nor gained any settlement for herself. Ld. *Kenyon*, C. J. It has been very properly observed on former occasions, that this Court ought to be anxious, in determining questions arising on the settlement laws, to lay down clear and distinct rules for the information of a very useful class of persons, the magistrates, who are to decide in cases of this kind. And I hope that the rule of decision which we are about to establish in this case, will fall in with every case that has been cited. For with regard to a supposed expression of mine in *Rex* v. *Witton cum Twambrookes*, there is an inaccuracy in it. I think I could not have said, because it never was my opinion, that the mere circumstance of a son's attaining the age of 21 was an emancipation so as to prevent his having a derivative settlement gained by his father afterwards, if the son continued to live with the father; for if the son, with unbroken continuance, remain with and a member of the father's family, he is not emancipated. But this proposition will not break in upon any of the cases, but may be reconciled with all of them, namely, that "if a child, under the age of 21, leave his father's home, and is thereby *quà* severed from his father's family, and return to his father during a state of pupilage, during which time policy requires that the child should be under the protection of his father, he must be considered as incorporated with his father's family, unless he have gained a distinct settlement of his own, or have become the head of a family himself: but if a child, after a state of pupilage, sever himself from his father's family, he cannot afterwards be incorporated with it." The case of the soldier proceeded upon that principle; he had neither gained a settlement nor was in a situation to gain one, but he had ceased to be under the controul of his parents, and had become liable to the controul of others; and as he did not return to his father until after he was of age, the case was thought too clear to be argued. But it must not be inferred from the circumstances of that case not having been argued, that it passed without consideration, and is not entitled to much notice; because in the case *R.* v. *Halifax, ante*, p. 297. *Aston* J., who was a very good sessions lawyer, alluded to it as a case properly decided. And if so, it must govern the present, for I cannot distinguish between them. Some stress, however, has been laid in the argument to-day, on the circumstance of that person having engaged in the situation of a soldier; but that cannot be material in any other way than as shewing that the son was no longer under the controul of his father. So, in this case, this woman was above 21; she had contracted the relation of servant with another family; she was out of her father's family; she was under no controul to him other than that arising from moral obligation and gratitude; and I cannot see how she could afterwards be deemed to be incorporated with the father's family. The rule to be extracted from the cases is this; if the child be separated from the parents, and without marrying or obtaining any settlement for himself, return to them again during the age of pupilage, he is to all intents a part of his father's family, and his settlement will vary with that of his

R. v. Roach.

What will constitute emancipation.

General rule.

R. v. Roach. father; but if, when that time arrives when, in estimation of law, the child wants no further protection from the father, the child remove from the father's family, he is not for the purpose of a derivative settlement to be deemed part of that family; this rule will reconcile all the cases, and will be found to be an intelligible one. The Court agreed, and the order of sessions was confirmed.

See also *Rex* v. *Everton*, and *Rex* v. *Sowerby*, *ante*, p. 293.

A widower, having a daughter, placed her at eleven years of age with an uncle, by whom she was wholly maintained after that time, and with whom she continued to reside after she came of age, doing service for him, but without any contract of hiring to give her a settlement of her own; the father, in the mean time having gone out to service. Held, that on coming of age she was emancipated.

Rex v. *Cowhoneyborne*, *T.* 48 *Geo.* 3. 10 *East*, 88. *Bott*, *Cont.* 115. 1 *Nol. P.L.* 284.—Removal from *Teddington* to *Cowhoneyborne*, order confirmed, subject, &c.* The pauper being legally settled in *Cowhoneyborne*, some time after the death of his wife, who died in childbed fifteen years ago last *Whitsuntide*, went to service, and hired himself to one *Clarke* of *Cowhoneyborne*, who afterwards removed to *Teddington*, and the pauper left him at *Michaelmas* 1806, having served him the five preceding years under a hiring for a year in *Teddington*. On the death of the pauper's wife, *W. Nightingale*, who had married his sister, took to and maintained the infant, of which she had been delivered, out of kindness to the pauper; and the pauper's daughter, *Elizabeth*, then about eleven years of age, went, with the pauper's consent, to *Nightingale*, for the purpose of nursing her infant sister. The infant died in about a year; and from that time to this she has continued to live in the house of *Nightingale* as one of the family, but doing the work of a servant. *Nightingale*, who, previous to the pauper's daughter living with him, kept a servant, would have hired a servant if she had left him; but he never hired her, or paid her any wages, though he found her in board, clothes, and such pocket-money as he thought fit. The said *Elizabeth* will be twenty-seven years of age in *June* 1808. During all the time she so lived with *Nightingale*, she considered herself as liable to be sent away whenever he pleased; and he considered her at liberty to quit him when she chose; and the pauper considered himself, as her father, bound to receive and support her if *Nightingale* ceased so to do. But the pauper was not a housekeeper at any time after he went into *Clarke*'s service. The pauper's daughter, *Elizabeth*, was never hired as a servant to *Nightingale*. The question intended for the opinion of the Court was, whether the pauper's daughter *Elizabeth* were, under the circumstances of the case, so emancipated, as to enable the pauper to gain a settlement by his service with *Clarke* in *Teddington*, under such hiring as aforesaid. Ld. *Ellenborough* C. J. The daughter having been originally placed, when an infant, by her father in her uncle's family, continued to live with her uncle after she came of age as part of his family; receiving no assistance from her father, and being at liberty to depart from her uncle when she chose. She was of age, living apart from her father, having her support from sources independent of him, and was at liberty to quit her uncle when she pleased, as she herself considered. If this be not emancipation, it would be difficult to say what is so, and when it can take effect. Then if she were emancipated after she came of age, it follows that the father, by the construction which has been put upon the statute of King *William*, gained a settlement by the subsequent hiring and service for a year in *Teddington*, as "an unmarried person, not having any

child."—*Grose* J. The daughter lived apart from her father, after she was twenty-one; not under his controul, nor having any contemplation of it; nor receiving any assistance from him; she was therefore emancipated when her father was hired for a year, and served in *Teddington.* — *Le Blanc* J. The question is, whether any settlement gained by the father under these circumstances could be communicated to the daughter; for, if so, he could not gain a settlement by the hiring and service in *Teddington;* and that question depends upon this, whether the daughter continued to be part of his family at the time. On the death of the father's wife, he broke up housekeeping, and the daughter was sent to her uncle, with whom she continued to live from that time; he supplying her with clothes and pocket-money: and there she still remained after she came of age. Under these circumstances, living away from her father before and after the age of twenty-one, he having no house of his own, nor giving her any support; I think she ceased, after she came of age, to be part of her father's family, and consequently no future settlement gained by him could be communicated to her; and if so, he gained a settlement by the hiring and service in *Teddington.* — *Bayley* J. To constitute emancipation, it is clearly not necessary for the child to have acquired a new settlement of his own: the case of the *King* v. *Roach, ante,* 302., is in point to that; where the daughter, being an adult, by leaving her father's house, and going out to service, was held to be emancipated. Now, where is the difference between going out from the father's house after twenty-one to seek a livelihood, and continuing out for the same purpose after that age, where the absence from the father is so long as it was here: the father, too, during all that time, having no house of his own, and having indeed contracted a relation which precluded him from receiving his daughter at home.— Orders quashed. (See this case also, *post,* § viii. 1.)

R. v. Cowhoneyborne.

Rex v. *Uckfield, T.* 56 *Geo.* 3. 5 *M. & S.* 214. Upon appeal the court of quarter sessions for the county of *Sussex,* confirmed an order of two justices for the removal of *James Marshall* from *Hurstperpoint* to *Uckfield,* subject to the opinion of the court of K. B. upon the following case: The pauper, *James Marshall,* being legally settled in the parish of *Uckfield,* on the 10th of *April,* 1802, hired himself for a year to one *Jeffery,* then residing in the parish of *Tonbridge,* in the county of *Kent,* and continued in the service of *Jeffery* in that parish for the whole year. *Marshall* was a widower at the time of his hiring himself to *Jeffery,* and had one daughter, *Frances,* eighteen years of age, who had been separated from him at the age of four years, and had lived with her grandfather until his death in 1801, during which time she was entirely supported by the grandfather, the pauper contributing nothing for her maintenance. The grandfather by his will devised the residue of his estate (which amounted to 1600*l.*) to his executors in trust, to place the same out upon security, and pay the interest to his wife for life for her own use; and he directed that his wife should, during her life, thereout educate and maintain *Elizabeth* and *Frances,* the children of his late daughter *Elizabeth Marshall,* and after the decease of his wife he gave the said residue equally to be divided between the said *Elizabeth* and *Frances;* but in case his wife should die

Where pauper at the time of hiring himself, had a daughter of the age of eighteen, who from the age of four had lived with her grandfather, and had been maintained by him until his death, and afterwards by her grandmother, which continued until she attained twenty-one, the grandfather having by his will directed the grandmother to educate and maintain her out of a fund given to the

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grandmother for life, and after her decease to the daughter: Held that the daughter was not emancipated, and consequently pauper was not within stat. 3 & 4 W. & M. a person *not having a child* at the time of the hiring.

before they attained twenty-one, the interest to be applied to their maintenance and education during their minority, and upon their attaining twenty-one respectively, the principal to be paid to them accordingly; and if either of them should die under age and without leaving issue, her share to go to the survivor; but if either should die under age leaving issue, her share to be equally divided between such issue, as they attained twenty-one, the interest in the mean time to be applied towards their maintenance and education. After her grandfather's death *Frances* continued to live with her grandmother, and was entirely supported by her until she had attained twenty-one, and was living with her at the time when the pauper hired himself to *Jeffery*, and never returned to her father. The question was, if the pauper gained a settlement in *Tonbridge* by this hiring and service. After argument, Ld. *Ellenborough* C. J. said, This is a perfectly new head of emancipation. The question is, if, on account of a testamentary bounty left to this child by her relation the child shall be deemed to be emancipated from all control of the father, and the father to be discharged from all claims of the child for maintenance, if that should become necessary. If such a provision as this amounts to an emancipation, the consequence will be, that the devolution of an estate to a child, from the mother, for instance, would operate in the same way, and discharge the father from the duty of maintenance. This, then, is quite a new head of emancipation. The cases of emancipation put by Ld. *Kenyon* in *Rex* v. *Witton cum Twambrookes*, are the child's attaining its full age, or being married, or gaining a settlement for itself, or, as in the case of the soldier contracting a relation inconsistent with the idea of his being in a subordinate situation in his father's family. Not one of these is the case here; it is a case *sui generis*. If, therefore, it is to be considered as an emancipation, it must be on some reason or principle. Now, the reason why it should be so considered is said to be this, that the provision made for the child secures to her an independence and maintenance, and to the parish a discharge from all probability of burthen on her account. The statute 3 *W. & M.* enacts, That if any unmarried person not having child or children shall be lawfully hired, &c.; which has been construed to mean, that if he has no child that can be a burthen to the parish in consequence of his acquiring a settlement there, he shall be considered as not having a child within the meaning of the statute. But was that the case of this pauper when he hired himself? The property devised was merely in trust for the use and benefit of the grandmother, in the first instance, with a direction to her, certainly amounting in equity to an obligation to maintain the child, and after the grandmother's death to the child. But this trust might have failed; the trustees might have violated it and not paid the interest to the grandmother, or she might have proved unfaithful to her trust and refused or neglected to maintain the child; in which events, so long at least as they continued, the child must have resorted to her father for maintenance, who was not discharged by any emancipation of the child from the parental obligation of providing for her maintenance. It seems to me, therefore, under these circumstances, that the father was not in

the situation of a person not having a child within the meaning of the statute; because he had a child, who would have a right to share with him, if he should be unable to provide one, a maintenance from the parish where he should have become settled, and who consequently might be a burthen to the parish. He was a person having a child, who might, in the eventual failure of the funds bequeathed for her support, claim a provision from him, and he again might have claimed to have the controul and custody of her at any time. The case has certainly been ingeniously argued; but I think it does not amount to an emancipation either to discharge the rights of the one or the duties of the other. — *Bayley* J. I am of the same opinion. The rule is, that the child's settlement shall shift with that of the father until the child is emancipated. This is a perfectly new case, and different from all the other cases of emancipation. A provision is made by the will of the grandfather for the maintenance and education of the child, who is living with her grandmother, apart from her father's family; and the question is, if such a provision can be said to deprive the parent of his rights over his child, to resume to himself the care and custody of her, or can relieve him from the duty of maintaining her. If this case amounts to an emancipation, would it not be the same, under the like circumstances, at whatever age the child might be? For the law makes no distinction in respect of the different ages of infants under twenty-one, at which time the parental authority ceases, and the father has no right to reclaim his child. Let us then put the case of an infant of very tender years, for whose maintenance the grandfather should make a provision by his will; could it be contended that such a provision would preclude the father from insisting upon having his child returned to him? I think that could hardly be contended. But, to come nearer to the present case: suppose, after the year's service of the father, the child then being of the age of nineteen, had returned to the roof of her father, the father having then acquired a new settlement by such service, can there be a doubt that the child would have taken that settlement? and yet, if she was once emancipated, she could not, because she would be emancipated for ever. If, then, she would have been entitled to the father's subsequent settlement, that shews that the separate provision made for her by her grandfather's will could not operate as an emancipation; I therefore think that as she was not emancipated, but, notwithstanding the separate provision made for her, continued part of her father's family, and capable of deriving from her father any settlement which he might acquire, she was a child who might become chargeable to the parish in consequence of his acquiring a settlement. If so, it follows that the father was not in the situation of a person who is capable of acquiring a settlement by hiring and service; that is, a person not having a child within the meaning of the statute. — *Holroyd* J. (*a*) I concur in opinion with the rest of the court. The maintenance provided for the child by the will was precarious, and the obligation of the father to maintain her still continued. The father's control over the child also continued; and, therefore, there is no ground upon the cases, or upon principle, to hold that the child was emancipated. I therefore think that the father was not in a situation to acquire a settlement by hiring and service. Order confirmed.

(*a*) Abbott J. was absent upon the special commission.

Son was bound apprentice to a certificated person for four years, and after serving for the time, returned at the age of nineteen to his father. Held not emancipated.

Rex v. *Hardwicke, M.* 50 *Geo.* 3. 11 *East,* 578. 1 *Nol. P. L.* 281. 283. *3d edit.* (In this case divers points arose, and amongst them one relative to *emancipation*, and therefore it is here inserted.) An appeal against an order for removal of *Joseph Vipond, Mary* his wife, and their children, by name, was entered at the sessions in the name of "The churchwardens and overseers of the poor of the parish of *Hardwicke,* in the county of *Norfolk,* appellants, and the churchwardens and overseers of the poor of the parish of *Fulham St. Mary the Virgin,* in the same county, respondents." The sessions confirmed the order, and stated, that *John V.* the father of *Joseph* was a settled inhabitant of *Forncett St. Mary* in *Norfolk,* and about forty years ago came to reside in *Hardwicke,* in that county, on a tenement at the rent of 5*l.* 10*s. per annum.* The pauper *Joseph* was born in that parish, and at the age of fifteen, his father then residing on the said tenement, was apprenticed to *S. W.* of *Besthorpe* in *Norfolk,* cordwainer, and regularly served his time with his master, who resided in *Besthorpe* under a certificate from *Bunwell* parish, in *Norfolk.* During the first year of the son's apprenticeship, *John Vipond,* the father, purchased the tenement on which he resided at *Hardwicke* for 87*l.* During his apprenticeship he was clothed by his father, and he occasionally visited him. At the expiration of the apprenticeship, the pauper being then nineteen years of age, returned to his father's house in *Hardwicke,* where he staid two days, and received some new clothes: he then went back to his former master, and engaged to work with him by the piece; and did so work at *Besthorpe* for a year and a quarter. The respondents, in order to prove the settlement of the pauper in *Hardwicke,* called the father, who being a settled (and a rated) inhabitant of that parish, refused to be examined. They then called the pauper himself, who proved from his knowledge that his father had resided on the tenement at *H.* for twenty-five years, and that it was now worth 10*l. per annum.* And the court admitted the pauper to give evidence of his father's declarations to him, that he had purchased the house when the pauper was above sixteen years of age, at 87*l.*, and that he had about ten years ago laid out above 100*l.* on the premises. The court were of opinion that the pauper was not emancipated by his residing in *Besthorpe* under the indenture, nor by any other act subsequent to it, and therefore confirmed the order removing him to *Hardwicke.* — After argument Ld. *Ellenborough* C. J., as to the point of emancipation, said that the son must be considered as having been re-incorporated in his father's family, having returned and required and received his father's assistance, and therefore he followed his father's settlement; and he said that none of the cases of emancipation, which had been decided on the ground of the children's marriage, or obtaining a settlement of their own in another parish, or being under a different controul, incompatible with that of their parents, applied to this case. The other judges, *Le Blanc* and *Bayley,* (*Grose* J. being absent,) agreed, and the order of sessions was confirmed.

Emancipation.

The son of a certificated person, who was not named in the certificate upon the death

Rex v. *Morley, H.* 54 *Geo.* 3. 2 *M. & S.* 417. *Bott, Cont.* 29. Removal from *Armley* to *Morley;* the court of quarter sessions confirmed the order, subject to the opinion of the court of K. B. on the following case: The pauper's father resided in *Armley* under a certificate from *Morley,* dated 1st *June,* 1761, acknow-

ledging him by name, his wife by name, and their three children, *Mary, Anne*, and *Alice*, to be legally settled in the township of *Morley*. The pauper when he was about twelve years old (his father being then lately dead, and he residing with his mother in *Armley* under the certificate, as part of his late father's family,) was bound apprentice by the overseers of *Morley* to one *Lister* of *Morley*, till his age of twenty-one. He served in *Morley* under the indentures seven years, and then with his master's consent returned to *Armley*, where his mother and family then resided under the certificate, and still reside, to serve one *Gaunt* in *Armley*. The pauper continued in *Gaunt*'s service till the expiration of his indentures. He then hired with *Gaunt* for a year, and served a year, and remained with *Gaunt* four years in the whole, living with him in *Armley* during all that time. Upon the pauper's going to *Armley* to serve out the remainder of his apprenticeship with *Gaunt*, he did not go to his mother's house, nor at any time, during the rest of his apprenticeship, resided at his mother's as part of her family. This case first came before the court in *Trinity* term last, and was in part argued, but on account of its being imperfectly stated, was then, and at several subsequent times, adjourned, in order to be amended, and was finally argued on a former day in this term. The question made upon the amended case was this, Whether the pauper gained a settlement in *Armley* by hiring and service with *Gaunt*? After argument, Ld. *Ellenborough* C. J. said, On this case it is material to observe, first, that the pauper is not named in the certificate, but merely comprehended under it as part of his father's family; secondly, that after the time of quitting his father's family he never returned to his mother's house, but continued to serve under the indentures until the age of twenty-one, and then hired himself for a year, and served for a year, and so continued in the service for four years successively with the same master. And the question is, whether, having so hired himself after the age of twenty-one, he was in a capacity thereby to gain a settlement in *Armley*. The negative of this question has been contended for in support of the order of sessions, on the statute 9 & 10 *W*. 3. *c*. 11., and on the authority of *Rex* v. *Collingbourn Ducis*, (*ante*, p. 301.) *Rex* v. *Keel*, and *Rex* v. *Ingworth* (*post*, § xiv.). The words of the statute are, " that no person whatsoever who shall *come into* any parish by certificate shall gain any settlement unless he shall take a lease of a tenement, &c., or execute some annual office, &c." But I observed before upon the first circumstance of this case, which is never to be lost sight of, that the pauper is not named in the certificate, and therefore he is to be considered as *coming into* the parish by the certificate, only so long as he is a part of his father's family. And that brings it to the question, whether he was a part of his father's family. In the case of *Collingbourn Ducis* the pauper, after leaving his father's family, returned to the parish where his father was living under the certificate, being under age, and was hired in the certified parish, at which time he continued a part of his father's family. So, in *Rex* v. *Keel* the pauper returned to a branch of her family in the certified parish, and was there hired and served whilst under age. The case of *Rex* v. *Ingworth* is the nearest to the present case; but there is this distinction, that there the pauper returned under age to the father's

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of his father, was bound apprentice in the certifying parish, where he served under the indentures for some years, and then with his master's consent served the remainder of his time till twenty-one with a person in the certified parish, where his mother and family resided under the certificate, and afterwards he hired himself to the same person for a year, and served that and three successive years in the certified parish: Held that he gained a settlement by such hian . service.

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house, and hired himself whilst under age to a person in the same parish; and although by comparing his age when he first let himself, with the time when he last let himself, it does appear that he must have been of age at the commencement of the second year's service under the last letting, yet that circumstance seems to have escaped the notice both of the counsel and the court; and the case was decided entirely on the authority of *Rex* v. *Keel*, which it was supposed exactly to resemble; but which, for the above reason, is not so. We do not think, however, that this is an authority to warrant us in deciding that where a child, not named in the certificate, separates himself from his father's family at an age when he is by law capable of supporting himself, he shall either derive a settlement acquired subsequently by his father, or shall be prevented by the certificate from gaining a settlement for himself, which is a disability that can only attach on him as being one of the family. This is illustrated by *Rex* v. *Roach*, where a daughter, being of age, left her father's family, and hired herself to a farmer for eight weeks; during the time of her absence her father acquired a subsequent settlement, and it was determined that she was not entitled to such subsequent settlement, on the ground that she had ceased to be a part of the father's family, or in the language of the cases, was emancipated. That case was fully argued and considered, and it lays down a rule in precise terms, which may serve to govern others in future. — The same point was determined in *Rex* v. *Cowhoneyborne*, 10 *East*, 89. That was the case where the daughter, being under age, went to reside with her uncle, with her father's consent, and was maintained wholly by him, and continued with him till she was of the age of twenty-seven; and the court held that she ceased on her coming of age to be a part of her father's family, although she had not acquired any distinct settlement for herself, and therefore the father acquired a settlement by hiring and service, as an unmarried man, not having a child within the words of the statute. It is true that these latter were cases where the question did not arise upon a certificate; but they establish a principle which shews what it is that constitutes a child a part of his father's samily; and whatever divests him of the capacity as one of his father's family in the one case, divests him of the incapacity in the other. We are of opinion, therefore, that the pauper ceased to be a part of his father's family, and by the hiring and service gained a settlement in *Armley*. Orders quashed.

Rex v. *Huggate*, *E.* 59 *Geo.* 3. 2 *B.* & *A.* 582. Where a pauper was bound apprentice to a certificated man, and during his apprenticeship, he being of the age of eighteen, his father gained a new settlement; and the pauper did not return to his father's house till after he was twenty-one; the court of K. B. held that he was not emancipated, and that his settlement followed the new settlement of his father.

During the minority of a child, there can be no emancipation unless he marries, and so becomes himself the

Rex v. *Inhab. of Wilmington*, *H.* 2 & 3 *Geo.*4. 5 *B.* & *A.* 525. Removal from *Crayford* to *Wilmington*, in *Kent*. The sessions confirmed the order, subject, &c. Case: — The pauper, *John Moore*, never did any act by which he acquired a settlement in his own right. In the year 1814, he was removed with his father, *Thomas Moore*, by an order of two justices, from the parish of *Crayford* to the parish of *Wilmington*, as the place of settlement

of the pauper's father, which order was appealed against, and upon the hearing of the appeal confirmed. The pauper, in the same year, returned with his father into the parish of *Crayford*, and was hired by the week to Sir *Henry Crewe* in that parish, in whose service he continued as a weekly servant for nearly two years. Upon leaving the service of Sir *Henry Crewe*, he followed the occupation of mole-catching in the parish of *Crayford*, by which he obtained his own living. He never resided with his father's family, nor did his father exercise any controul over him. In the latter end of the year 1815, when the pauper was about 17, his father left *Crayford*, and went to live first at *Poplar*, in a tenement at 4*s.* per week, where he continued about eight months, and in or about the month of *February*, 1817, went to *Bow*, where he rented a house and orchard at 20*l.* *per annum*, and in which he still continues to reside. Whilst the pauper followed the business of mole-catching at *Crayford*, he used occasionally to visit his father both at *Poplar* and at *Bow*, and once slept at the father's house in *Poplar*, but he did not receive any maintenance or assistance whatsoever from his father. After the father had occupied the house at *Bow* for rather more than a year, the pauper, who was then about 19 years of age, married his present wife. The question for the opinion of the court was, whether the pauper before his marriage was emancipated by his earning his own livelihood, in the manner before mentioned, in the parish of *Crayford*. — After argument, *Abbott* C.J. It is of importance to lay down a general rule for the guidance of magistrates on this subject of emancipation, and the best which I can suggest is this, that during the minority of a child there can be no emancipation, unless he marries, and so becomes himself the head of a family, or contracts some other relation, so as wholly and permanently to exclude the parental controul. I say nothing about his acquiring a settlement of his own, because that does not, as it seems to me, properly fall under this head. There can be, however, no question, that in that case he is only removable to his own acquired settlement. Here, the pauper was under 21, and had neither married nor contracted any such relation as I have described, at the time when his father acquired the settlement at *Bow*. He was therefore not emancipated, and the order of sessions is wrong. Order of sessions quashed. See *Rex* v. *Witton cum Twambrookes*, *ante*, p. 300.

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head of a family, or contract some other relation, so as wholly and permanently to exclude the parental control. It seems that the acquiring a settlement of his own does not properly constitute an emancipation.

General rule.

Rex v. *Inhab. of Rotherfield Greys*, *Oxon.* *H.* 3 & 4 *Geo.* 4. 1 *B.* & *C.* 345. Two justices, by their order, removed *Thomas Binfield* from the parish of *Tooting Graveney*, in the county of *Surrey*, to the parish of *Rotherfield Greys*, in the county of *Oxford* Upon an appeal, the sessions confirmed the order, subject to the opinion of this court, on the following case. The pauper was born on the 22d of *November*, 1794, in the appellant-parish, where his father was settled. In 1807, the pauper's father removed with his wife and family, including the pauper, to the parish of *Tooting Graveney*, in the county of *Surrey*, and took a cottage there, which he has held ever since, at 3*s.* per week. The pauper resided at *Tooting Graveney* with his parents till 1813, when he enlisted in the marines, and went abroad in that service. He remained in the marines till the 8th *September*, 1815, when, in consequence of the reduction of that corps, after the peace, he

A minor, having enlisted into the marines, was discharged from that service, and returned to his father's family before he attained the age of twenty-one years: Held, that he was not emancipated.

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received his discharge, and returned the same day to his parents at *Tooting*, being then under the age of 21 years, and resided with them from that time until some time after his father hired a stable in *Streatham*. About a year after the pauper's return home, the pauper being then more than twenty-one years of age, his father hired a stable, in the adjoining parish of *Streatham*, at 4*s*. a week, which he held for about nine months, still continuing to reside at the cottage at *Tooting Graveney*. The cottage and the stable together were above the annual value of 10*l*. The pauper had never done any act to acquire a settlement for himself. — After argument. *Bayley* J. I am of opinion that the pauper was not emancipated. In order to constitute emancipation, the party ought to be wholly and permanently free from the parental controul. In this case, the pauper, by enlisting into the marines, became subject to the controul of the crown, and continued subject to that controul as long as the period of his service continued; and if he had remained in the army till the age of 21 years, his emancipation would undoubtedly relate back to the time of his enlistment; but before he attained the age of 21 years, the relation between him and the crown ceased, and he returned to and constituted part of his father's family, and of course again became subject to the parental controul. He, therefore, was not emancipated. This is consistent with the opinion of Lord *Kenyon* C. J. and *Lawrence* J., in *Rex* v. *Roach* (6 *T. R.* 247.) and is consistent with the general rule laid down by the present Lord Chief Justice in the late case of *Rex* v. *The Inhab. of Wilmington* (5 *B. & A.* 525.), "That during the minority of a child, there can be no emancipation, unless he marries, and so becomes himself the head of a family, or contracts some other relation, so as wholly and permanently to exclude the parental controul." Now the pauper, in this case, by entering into the marines, did not, in the event that has happened, contract a relation, so as wholly and permanently to exclude the parental controul, for he returned to his father's family before he became of age, and again subjected himself to the parental controul." In the late case of *Rex* v. *The Inhab. of Hardwicke* (5 *B. & A.* 176.), the Lord C. J. says, "That during the minority of a child, he will remain, almost under any circumstances, unemancipated; but where the new settlement is acquired by the parent, after the child has attained 21 years of age, it will not be communicated, unless in fact the child continues part of the family. When, therefore, at that period, he is absent, employed in getting a living for himself, or serving in the militia, he no longer remains a member of the family." In this case, the pauper was, at the period when he attained to the age of 21 years, living with his father, and constituting a part of his family. He was, therefore, not emancipated, and he acquires his father's settlement in *Tooting Graveney*, and the order of sessions must be quashed.—*Holroyd* J. I am of opinion that the son was not emancipated so as to deprive him of the settlement gained by the father in the parish of *Tooting Graveney*. By the common law, the father is entitled to the controul of his child, unless some other circumstances occur to deprive him of his controul. By entering into the marines, the pauper ceased to be under the controul of his father, and became subject to the controul of the crown, as long as that state of circumstances continued.

But before he attained the age of 21, he ceased also to be under the controul of the crown, returned to his father's family, and again became subject to his controul, and, consequently, was not emancipated. It has been said, that this being an engagement for life, constitutes in itself a complete and perfect emancipation. It was an engagement for life, so as to bind the pauper to serve for life, if required; but the duration of the service depends on the discretion of the crown. It may or may not last for life; and in this case it was terminated before the pauper attained the age of 21 years; so that the parental authority was not wholly and permanently excluded.—*Best* J. By the general policy of the law of *England*, the parental authority continues until the child attains the age of 21 years; but the same policy also requires, that a minor shall be at liberty to contract an engagement to serve the state. When such an engagement is contracted, it becomes inconsistent with the duty which he owes to the public, that the parental authority should continue. The parental authority, however, is suspended but not destroyed. When the reason for its suspension ceases, the parental authority returns. This is perfectly consistent with the opinions of Lord *Kenyon* C. J. and *Lawrence* J. in *Rex* v. *Roach*, and with the general rule laid down by the present Lord C. J. in *Rex* v. *The Inhab. of Wilmington.* In this case, the pauper, before he attained the age of 21 years, returned to his father's family, and again became subject to the controul of his father. He was not, therefore, emancipated at the time when the father acquired his settlement in the parish of *Tooting Graveney*, and, therefore, the order of sessions must be quashed. Order of sessions quashed.

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§ VII. Settlement by Marriage.

Wife shall follow the husband's settlement though she never reside with him.

Respecting the mode of gaining a derivative settlement by marriage, it seems to be a good general rule, that a woman marrying a man who hath a known settlement shall follow the husband's settlement. And although in the case of *Uphottery* v. *Dunkswell*, (*post*, p. 314.) it was held, that the wife shall not gain a settlement with the husband until she have lived with him forty days irremovable as part of his family; yet afterwards, in the case of *Rex* v. *Pincehorton*, *M.* 3 *Geo.* 1., it was agreed by the court, that a wife is to be sent to her husband's settlement, though she never lived with him there. And in the case of *St. Giles's* v. *Eversley*, *Blackwater*, *ante*, p. 284., the widow was removed to the deceased husband's settlement, though she had never been there; and it was ruled by all the court, that the removal was good, and that she must be sent to the last legal settlement of her husband, having acquired no other settlement since his death.

Wife can gain no settlement separate from her husband.

It seemeth also to be agreed, that a wife can gain no settlement separate and distinct from her husband, during the coverture. As in the case of *Aythorp Rooding* v. *White Rooding*, *M.* 30 *Geo.* 2. 2 *Bott*, 75. 1 *Nol. P. L.* 258. 3*d edit.* (*hereafter following*); where the wife, after the husband was run away, went to live upon a copyhold of her husband's, where her husband had never resided; it was held, that although she might not be removed from

thence, yet (her husband being living) she could not thereby gain a settlement.

Husband dead and his place of settlement not known, the wife's maiden settlement remains.

It seemeth also to be agreed, that a woman marrying a man that hath no known settlement, doth not lose her former settlement which she had before marriage. But the great point of difference hath been, whether such settlement continue to her during the coverture, or be suspended during her coverture, and only revive after the husband's death. Which point includes in it this question, whether the parish where the woman was last legally settled before marriage shall, by barely proving such marriage, avoid the settlement with them during the husband's life; or whether, in order to avoid such settlement, it is not also necessary for them to prove that such woman had gained another settlement, that is to say, that the husband hath a settlement, and where?

In relation to which case, where the husband hath no known settlement, it hath been adjudged as follows:

Where the woman marries a foreigner.

St. Giles's v. *St. Margaret's*, *E.* 2 *Geo.* 1. 1 *Sess. Ca.* 97. 2 *Bott*, 77. 1 *Nol. P.L.* 258. 3*d edit.* A woman marries a foreigner, and her husband dies. — By the court: she must be sent to the place of her settlement before marriage.

Husband's settlement unknown, and he dead.

Rex v. *Chiddingstone*, *H.* 12 *Geo.* 1. 2 *Stra.* 683. 1 *Nol. P.L.* 258. 3*d edit.* It was stated, that a single woman settled at *Chiddingstone* was married to a man who was since dead, but his settlement did not appear. — And by the court: her settlement before marriage stands.

Husband dead.

Uphottery v. *Dunkswell*, *M.* 1 *Geo.* 1. *Sett. & Rem.* 89. 1 *Sess. Ca.* 80. 2 *Bott*, 76. 1 *Nol. P.L.* 259. 3*d edit.* [cited by *Bott* and *Nolan* as *Appotens* v. *Dunswell.*] A woman is settled in *Dunkswell*, and afterwards marries a vagrant, whose settlement doth not appear. But he goes and lives in *Uphottery*, and dies there. Two justices remove the widow to *Dunkswell*, where she was settled before marriage. — And by the court: where it appears that the husband in his lifetime had no legal settlement that can be found, there the marriage shall not put her in a worse condition than she was before, and is all one as the case of a *Scotchman* and a foreigner, and she shall not lose her former settlement.

Hitherto the cases seem to be agreed, supposing the husband dead. But the difficulty is, where the husband is supposed to be living. And in relation to this point, the following strong cases have been adjudged: —

Husband living, but having no known settlement in England.

Dunsfold v. *Wilsborough Green*, *M.* 12 *Ann. Fol.* 249. *Sett. & Rem.* 31. 2 *Bott*, 76. 1 *Nol. P.L.* 258, 259. 3*d edit.* A woman who was settled at *Wilsborough* married *Archibald Player*, a *Scotchman*, who had gained no settlement in *England*. Two justices removed her from *Dunsfold* to *Wilsborough*, the place of her settlement before marriage. Exception: this is a married woman, and by her marriage she ought to be settled where her husband was, and this cannot be right; for if the justices may send away a wife, it is making a divorce between husband and wife; and if he is a *Scotchman*, they ought to send her, as part of his family, to the bordering counties of *Scotland*, according to the act of the 39 *Eliz. c.* 4. § 6. The court held, though she were a married woman, yet if her husband had no settlement she could not

gain any other settlement than she had before marriage; and as for divorce it was none; for the husband might come to her as well at *Wilsborongh Green* as at *Dunsfold*. **Dunsfold v. Wilsborough Green.**

Note: Stat. 39 *Eliz.* only says, that the *Scotchman* himself, if a vagrant, may be so sent; but says nothing of his family.

St. Giles's v. *St. Margaret's, M.* 3 *Geo.* 1. *Sett. & Rem.* 97. 1 *Nol. P. L.* 258. *3d edit. Sarah Etherington* was settled at *St. Giles's;* and marries an *Irishman.*—By the court: the marriage will not put her in a worse condition than she was before; and they held that she continued her settlement notwithstanding her marriage. **An Irishman's wife.**

Rex v. *Westerham, H.* 12 *Geo.* 1. *Fol.* 252. 2 *Bott,* 77. 1 *Nol. P. L.* 259. *3d edit.* The order specially stated by the sessions was this: it appeared to the court by the testimony of *Elizabeth Pincheon,* that she was, at the time the said order was made, a married woman, and that her husband was one *Thomas Pincheon,* who was born in *Wiltshire,* but in what place or parish he had a settlement he never informed her, nor doth she know; but that he is run away, and still living, for what she knows.—By the court: whether the husband be living or dead, signifies nothing. For unless it appear that he has a settlement, the woman must be sent to the place of her settlement before marriage: for supposing the husband was born upon the high seas, or in *Ireland,* or a foreign country, if the woman might not be sent to the place of her settlement before marriage, she might be starved. **The wife may be removed to her maiden settlement, if the husband's be not known: The husband run away.**

On the contrary, *Stretford* v. *Norton, H.* 12 *Geo.* 2. *Andr.* 307. 2 *Sess. Ca.* 185. 19 *Vin. Abr.* 376. *Burr. S. C.* 122. 1 *Nol. P. L.* 259. *3d edit.* [disapproved of in *St. John's, Wapping,* and *St. Botolph's, Bishopsgate,* (*post.*)] The case was thus: an *Englishwoman* married an *Irishman* who had no settlement in *England.* He ran away; two justices remove the wife to the place of her settlement before marriage. And it was urged, that there could be no pretence that this separated her from her husband; and if she cannot be sent thither, she can be sent no where. But by *Lee* C. J. It is now a settled point, that by the marriage the woman's settlement is suspended, whether the husband have or have not a settlement; for otherwise the justices might separate husband and wife; and therefore to make the order good, it should have appeared that the man was dead.—And the order was quashed by the whole court. And there were cited these two following cases; viz. *Hanway* v. *Marston, T.* 1 *Geo.* 1. It was there declared by the Ch. J. that the settlement of a woman, who marries a vagrant, is suspended during the coverture; and that as the husband cannot be sent to the place of the wife's settlement, so neither can the wife herself, because an husband and wife being as it were but one person cannot be parted. *Shadwell* v. *St. John's, Wapping, T.* 9 *Geo.* 1. One *Ridley,* a vagrant, having no settlement, married a woman who had a settlement in *St. John's Wapping,* and had four children by her born in *Stepney.* And it was held, that the children were not settled in the place where they were born, but where the wife had a settlement; but that this was suspended during the coverture, and it revived again upon the death of the husband. (*a*) **Suspended settlement.**

(*a*) Sir *James Burrow* says, he doth not find the case of *Shadwell* and *St. John's, Wapping,* in any printed book or manuscript: but it seems (he says) to be the

Husband absent and living.

Finally, in the case of *St. John's, Wapping*, and *St. Botolph's, Bishopsgate, H.* 28 *Geo.* 2. *Burr. S. C.* 367. 2 *Bott*, 78. 1 *Nol. P. L.* 259. 3*d edit.* it was adjudged as follows: *Eleanor Kinley* having gained a settlement in *St. Botolph's* parish by hiring and service, afterwards married *Thomas Kinley* an *Irishman*, who had no settlement in *England*. About two years ago, the husband entered on board a man of war bound for the *West Indies*, but *Eleanor* about two months ago heard he was living: and the question was, whether her settlement which she had before marriage ceased, or was in suspense, during the coverture; and she should be looked upon as a casual poor; or she should be sent to the place of her settlement before marriage? After full consideration, *Ryder* C. J. delivered the opinion of the court: 1. It is certain *St. Botolph's* was once her settlement, and that is not disputed. 2. That settlement continues till she gains a new one. 3. That she has never yet gained a new one. To the second point he said, a settlement is a permanent thing; it lasts during life, or till a new one is acquired: and there is no case to be found where it has been determined or ceased sooner. Neither can any person discharge his own settlement sooner, or by any other means. The question is not, whether she gained any new settlement by marriage, but whether her old settlement were discontinued by her marriage with a person who had none? It is absurd to say, she shall lose her own without getting another. The objection that the husband and wife would be separated, is of no weight here; for they are separated already: I must own the above case of *Stretford* v. *Norton* is not to be distinguished from the present, and is against our present opinion: to be sure we must have great regard to former resolutions in this court, but we must judge upon the case before us. How that case came to be determined so, I do not know; but there are at least four authorities the other way, (which perhaps might not then be cited,) and we think the reason is with the old cases. The husband may come to her in one parish as well as the other, for he will be a vagrant in both, and liable to be treated as such. The wife's settlement remains, having never been determined, but only, as it were, suspended during the time that she continued under the power and protection of her husband, and was maintained and supported by him.

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same case which he had heard reported in the form of a catch, to the following effect:

A woman having a settlement
  Married a man with none:
The question was, He being dead,
  If that she had, was gone?
Quoth Sir *John Pratt** —— Her settlement
  Suspended did remain,
Living the husband; but, him dead,
  It doth revive again.

Chorus of Puisne Judges.
Living the husband; but, him dead,
  It doth revive again.

* Then Lord Chief Justice.

Rex v. *Ryton*, *H.* 18 *Geo.* 3. *Cald.* 39. 2 *Bott*, 83. 1 *Nol. P.L.* 260. 3*d edit.* *Sarah Kidson* and her child were removed from *Winlayton* to *Ryton*. The sessions confirmed the order, and stated the following case: that the order of removal was in the words following: "*Durham*, to wit, to the churchwardens, &c. Upon the complaint, &c. of *Winlayton* unto us, &c. that *Sarah Kidson*, the wife of *Benjamin Kidson*, a soldier in his majesty's regiment of foot called *Young Buffs*, now in *America*, and *Hannah* their daughter, aged about twenty-three weeks, have come to inhabit, &c. &c. We do adjudge that the lawful settlement of them the said *Sarah Kidson*, and her said child, is in the said township of *Ryton*. We do therefore require," &c. By virtue of which said order the paupers were removed to *Ryton*, who gave notice of appeal. — *Ambler*, for the respondents, stated, that *Sarah*, when a single woman, gained a settlement in *Ryton*; that her said husband was at the time of the order in *America*, and it was not known whether he were living or dead; and that his settlement was unknown; and therefore the pauper had been removed to her settlement before marriage. — *Contra*, it was objected to the order of removal, and to the respondents' going into evidence of the facts stated by Mr. *Ambler*, and prayed that the order might be quashed, as it was not therein stated, that *Benjamin Kidson* was dead, nor evidence given that he was dead, nor that the place of his settlement could not be known. But the court were of opinion to admit evidence of the facts stated; and the same being fully proved, discharged the appeal. — Ld. *Mansfield* C. J. The sessions say, that the evidence laid before them proved that which would make the order of the two justices right; and I think that upon the evidence the court of quarter sessions did right. The other judges concurred. Rule discharged, and both orders affirmed.

On removal of a wife, it is sufficient in the first instance to prove her maiden settlement.

And the same point came in question in *Rex* v. *Edisore* otherwise *Hedsor*, *M.* 24 *Geo.* 3. *Cald.* 371. 2 *Bott*, 86. 1 *Nol. P.L.* 260., 3*d edit.* and was determined in like manner.

Likewise in *Rex* v. *Woodsford*, *H.* 23 *Geo.* 3. *Cald.* 236. 2 *Bott*, 86. 1 *Nol. P. L.* 260. 3*d edit.* *Mary Pitman*, widow, and her four children, were removed from *Woodsford* to *Wimbourne Minster*, in *Dorsetshire*. The sessions quashed the order, and stated the following case: — that by rule of the quarter sessions in *Dorsetshire*, on all appeals against orders of removal the appellants should begin, and in the first place, shew some settlement of the pauper out of the parish appealing: in pursuance of the said rule, the appellants produced a copy of the register of the birth of *Mary Scott*, in *Aspuddle*, and she swore that *Mary Scott* was her maiden name. — The counsel on the other side objected that this was not sufficient, but that the birth of *Robert Pitman* her husband, or some other settlement of *his*, ought to have been shewn, and that to identify the said *Mary* it was necessary to prove her marriage with *Pitman*. — The court adjudged, that the proof of the birth of *Mary Scott* was sufficient, and that the *onus probandi* of the marriage lay upon the respondents in order to prove their case, and quashed the order. A rule was moved for to shew cause why the order of sessions should not be quashed, upon the ground, that the pauper having been

R. v. Woodsford.

removed as a widow, imported that it was a removal to her late husband's settlement, and that her maiden settlement was nothing to the purpose. — But by the court: it may be the husband had no settlement; and if he had, till discovered, her own would in the mean time remain. It is enough in the first instance: the sessions have done right. Motion denied.

Rex v. *Harberton, H.* 51 *Geo.* 3. 13 *East*, 311. *Bott, Cont.* 36. 1 *Nol. P.L.* 260. 3*d edit.* The parish of *Drewsteignton* in *Devon* appealed against an order dated 24th *April*, 1810, whereby Elizabeth *the wife of* Charles Hill, *and* A. H. *and* E. H. *her daughters by her said husband*, were removed from *Harberton* in the said county, to *Drewsteignton*, as the place of their last legal settlement. — Upon appeal the respondents proved that *Elizabeth Hill* the wife, who before her marriage was called *Elizabeth Loram*, was born in *Drewsteignton* of parents living there. They also proved, that on the 16th of *February*, 1806, *she married* Charles Hill, in *Chagford;* and from a copy of the registry of the marriage which was produced, it appeared that he was therein described to be *of the parish of* Alverdiscott, *in the county of* Devon, *labourer*, and the said *Elizabeth* was therein described to be of the parish of *Drewsteignton*. They also examined *Elizabeth Hill*, the wife, who proved that the children mentioned in the order were born after the marriage, and also that her husband *Charles Hill* was with her in *Harberton* a little after *Christmas* last, since which time he had left her, and she had not seen him since; that he was not there when she was examined before the justices previous to nor at the time of her removal, and that she did not know her husband's settlement. The chargeability of *Elizabeth Hill* and her children to *Harberton* was not disputed. The parish of *Harberton* here closed their case without giving any further evidence to account for the absence of the husband, or of any further search having been made for him or inquiry as to his settlement. The parish of *Drewsteignton* produced no witnesses, nor did they offer any witnesses of the husband's settlement. The sessions quashed the order. — The court said that there could be no doubt but that the evidence offered by the respondents of the wife's maiden settlement was *primâ facie* sufficient, and that it lay upon the appellants to rebut it by giving evidence of the husband's settlement in a different parish; but the sessions having decided against the respondents, upon the supposition that they had not used due diligence in endeavouring to procure the attendance of the husband, or in accounting for his absence, or inquiring as to his settlement, without going further into the consideration of the case, this court sent it back to be reheard by the sessions, to give the appellants an opportunity of entering into their own case, and of giving evidence of the husband's settlement; and the description in the copy of the marriage, register of the husband that he was *of the parish of* Alverdiscott was considered to be no evidence of his having a settlement there.

See also the case of *Rex* v. *Eastbourne, ante*, page 266., where a wife was removed from her husband, a foreigner, to the place of her maiden settlement.

Evidence relating to Sections, V. VI. and VII.

(1.) *Evidence relating to Birth.*
(2.) ——————— *to Legitimacy.*
(3.) ——————— *to Bastardy.*
(4.) ——————— *to Marriage.*

1. Evidence relating to Birth.

Upon this head two points only arise, viz. When and where a child was born. Of the fact of birth the register is evidence, and the identity of the party may be proved as in ordinary cases.

Time of birth.

The parents may prove the *time* of birth; and after their death, their declarations made in their lifetime are evidence of that fact; but the register is only evidence of the christenings; and *non constat* thence, when the child was born. *Per* Ld. *Mansfield* C. J. *Goodright* v. *Moss, E.* 17 *Geo.* 3. 2 *Cowp.* 591.

Place of birth.

Of the *place* of birth, the following case has decided that the parents' declarations shall not be evidence.

Hearsay declaration of the father, as to the place of his son's birth, is not evidence.

Rex v. *Erith, T.* 47 *Geo.* 3. 8 *East,* 539. *Bott, Cont.* 34. 1 *Nol. P.L.* 293. 444. 3*d edit.* Upon appeal against an order of removal, it appeared on the evidence of the pauper, that the pauper remembered being at *Erith* with his father; that they had no fixed residence; and that his father, who was now dead, had told him that he was born a bastard at *Erith,* and had pointed to that place as they were passing, telling him that that was the place of his (the pauper's) birth. The respondents also proved a search made in the books of the parish of *E.*, and that no register of the pauper's baptism was to be found there. The sessions thought this sufficient evidence of the pauper's birth at *E.*, and confirmed the order. At a subsequent day the judgment of the court was delivered. *Per* Ld. *Ellenborough* C. J. The controversy was not, as in a case of pedigree, from *what parents* the child derived its birth, but in *what place* an undisputed birth, derived from known and acknowledged parents, has happened. The point thus stated turns on a single fact, involving no question but that of locality, and therefore not governed by the rules applicable to cases of pedigree; and is to be proved therefore as other facts generally are proved, according to the ordinary course of the common law; that is, by evidence to which the objection of *hearsay* does not apply. We are therefore, upon this ground, of opinion that the evidence of the father's declaration as to the birth-place of the pauper, the bastard, ought not to have been received. Order of sessions quashed. See *Phill.Ev.* 229. 6*th edit.*

2. Evidence relating to Legitimacy.

Marriage.

The first proof requisite to sustain the legitimacy of the party is, that a marriage was duly solemnised between the parents.

As in the former, so in the present case, the register and proof of identity will be sufficient; and also the parents may be examined as to facts connected with the main question of legitimacy, and their declarations upon that subject, or their treating a

child as such, will, after their death, be evidence of the fact of legitimacy.

The parents may be examined to the legitimacy of their children.

Goodright v. *Moss*, *E.* 17 *Geo.* 3. 2 *Cowp.* 591. It was in this case decided that the mother may be examined to the fact of the legitimacy of her children. And that the treatment of a child by a parent in his family, as illegitimate, would be good evidence. And also the declarations of parents in their lifetime,

But *after marriage*, they shall not be permitted to say, that they have had no *connection*, and that therefore the offspring is spurious.

So also in *Rex* v. *Bramley*, *T.* 35 *Geo.* 3. 6 *T. R.* 330. 2 *Bott*, 749. It was recognised that the husband was a competent witness with respect to the legitimacy of their issue.

3. Evidence relating to Bastardy.

The settlement of a bastard is in the place where he was born, as has been shewn before. The declarations of a bastard's parent made to the bastard in the parent's lifetime by him, are not evi-

Place of birth.

dence of the *place* of birth, as was decided in *Rex* v. *Erith* (*ante*, p. 319.) The parents are also competent to prove the legality or illegality of the supposed marriage; or that there was no marriage, or, there being a marriage, that the child was born at a certain time; or the fact of criminal intercourse (see *Rex* v. *Luffe*, *post*, p. 321.)

Where no marriage, but one reputed.

Where there has been no marriage, but reputation of there having been one, and assertions to that effect for many years by the father, yet the father may contradict it by his testimony.

Evidence of bastardy after the mother's death, by the father, who contradicted his own assertions made during the mother's life, that he had been married.

St. Peter's v. *Old Swinford*, *E.* 8 *Geo.* 2. *Burr. S.C.* 25. 2 *Bott*, 4. 1 *Nol. P.L.* 297. 3*d edit.* Two justices remove *Joseph* the son of *Joseph Haighington* from *St. Peter's* to *Old Swinford*, as a bastard, born there on the body of *Hannah Ashe*. On appeal the sessions quashed the order, and state the case specially: That *J. H.*, the father, gave evidence in court, that for seven years together he travelled with the said *Hannah Ashe*, as wandering persons from place to place, till the death of the said *H. A.*, which was about 15 weeks since; and that during all that time they cohabited and lay together as man and wife, and it did not appear that the marriage was ever questioned in the lifetime of the said *H.*; that during the time that he and the said *H.* did so cohabit as man and wife, she was delivered of three children; that the said *J.*, one of them, who was the person removed by the said order, was born in the said parish of *O. S.*; that the said *J.* and the other two children were reputed as his children, and baptized as the legitimate child of him and the said *H. A.*; that he and the said *H. A. were never married.* And it appearing to the sessions, upon the evidence of the said *J. H.*, that the said *Joseph*, the infant, was born during the time that the said *J.* and *H.* did cohabit and lie together, and were reputed as husband and wife, and there being no other evidence, they were of opinion that the evidence of the said *J. H.* could not support the order so as to bastardise the said *J.* the infant removed. And in support of the order of sessions it was observed, that this man could not be a proper witness in the case; for nobody could be adjudged a bastard without the evidence of the woman. But by Ld. *Hardwicke* C. J.

There is no ground to support the order of sessions. It is an apparent fact, that this man and this woman were never married. The evidence of the man is admissible to prove this fact. The child is therefore a bastard, and must be settled where born.

In *Rex* v. *Bramley*, *T.* 35 *Geo.* 3. 6 *T. R.* 330. 2 *Bott*, 749. 1 *Nol. P. L.* 334, 335. Upon an appeal against an order of removal, the sessions refused to receive the mother as a witness to prove that she never had been married, or had been illegally married; and also the declarations of the father and mother to that effect, they having cohabited together and been reputed as man and wife till the death of the father. But Ld. *Kenyon* C. J. held that this evidence was certainly admissible: that parents may be called to prove the children illegitimate. **Parents may prove that they were never married.**

In *Goodright* v. *Moss*, *E.* 17 *Geo.* 3. 2 *Cowp.* 591. It was held by Ld. *Mansfield*, that even where the fact of marriage is proved, the parents may prove the *time* when the issue was born, whether it was before or after the marriage. But he also said that after marriage the parents should not be permitted to say they had no connection. **Parents being married may prove the time of birth.**

However in *Rex* v. *Bramley* (*supra*), which was a case where the mother was called to prove the marriage illegal, Ld. *Kenyon* C. J. said that such evidence was open to very great observation.

The question has been raised, how far the wife may be permitted to prove the non-access of her husband, and also to what extent the fact of non-access shall bastardise the issue. — These points were fully considered in the case of *Rex* v. *Luffe*, so as to render the introduction of former cases relating to this point unnecessary in this place. **Of non access.**

Rex v. *Luffe*, *H.* 47 *Geo.* 3. 8 *East*, 193. 1 *Bott*, 735. 1 *Nol. P. L.* 330—333. An order of bastardy was made, adjudging *M. Taylor* to be the mother of a bastard child; and the order stated her to be the wife of *J. T.*, and that it appeared *as well on the oath of the said M. T. as otherwise*, that her husband had been beyond the seas, and that she did not see her said husband, or *had access to him*, from, &c. &c., and that her husband returned only 14 days before the birth, and adjudging *as well on the oath of the said M. T. as otherwise*, the said *H. L.* to be the reputed father of the said bastard child. One point was, that the wife was admitted to prove non-access, which it was contended ought not to have been. And it was held by Ld. *Ellenborough* C. J. that the wife might prove the fact of her connection with that person whom she charged as being the real father of the child. And the whole of the judgment of the C. J. and the other judges went upon the supposition that she was not a witness to the fact of non-access, but only to the fact of criminal connection: and that the words, "*as otherwise*," implied that other persons were examined on oath. The second point discussed in the case is not material in this place. The third point was, that the non-access of the husband ought to have been proved during the *whole time* of pregnancy. — In answer to this it was said by the Court, that natural impossibility, the being within the age of puberty, and great infirmity, would bastardise the issue though the husband had access. And that it was always a matter of evidence, whether the husband could by possibility be the father of the child. — But they left in full force the rule of law, that marriage before the birth made the after-born child, the concep- **The wife may prove the fact of connection with the person she charges as the father of the child.**

tion of which commenced before marriage, the legitimate child of the parties marrying. See this case also, tit. Bastard. Vol.I. p.302., and *Phill. Ev.* 80. 146. 229. *6th edit.*

But not the non-access of the husband.

Rex v. *Kea*, *E.* 49 *Geo.* 3. 11 *East*, 132. 1 *Nol. P.L.* 335. Upon appeal against an order of removal, the sessions received the evidence of a person, who had been the wife of the father (since deceased) of the pauper, and was now the wife of another, to prove that her first husband had not had access to her during a certain period, *viz.* at the time of the conception of the pauper, and for many months before. — Ld. *Ellenborough* C. J. said that to hold this evidence receivable, would be to overthrow the cases of *Rex* v. *Reading*, &c. which were not meant to be over-ruled in *Rex* v. *Luffe;* the Court intending in that case that the wife had only been examined to the facts she might legally prove, and not to the non-access of the husband. And the Court also said, that the death of the husband made no difference.

(4.) Evidence relating to Marriage.

An order of removal, removing a woman as the wife of J. S. to the parish of M. and unappealed against, is conclusive of the fact of marriage, upon that parish.

In *Rex* v. *Binegar*, *E.* 46 *Geo.* 3. 7 *East*, 377. 1 *Nol. P L.* 270. *3d edit.* Appeal from an order of removal of *Elizabeth Savage*, otherwise *Walters*, by the name of *E. W.* single woman, from *Midsomer Norton* to *Binegar.* An order of removal was made upon the examination of the wife, removing *J. S.* and *Betty his wife* from *Kilmersdon* to *Midsomer Norton*, and adjudging, upon that examination, that they *were* last legally settled in *M. N.* And the wife was removed from *K.* to *M. N.* And no appeal against the order. Afterwards, by another order, the same woman was removed (merely as *E. S.*) from the parish of *Wellow* to *M. N.* And against this second order there was no appeal. After this she hired herself for a year to a person at *Binegar*, and served the year, her husband *J. S.* being living. Then she returned to *M. N.* and became chargeable there; and afterwards *J. S.* was convicted for having run away and left the said *E. his wife* so chargeable. The respondents produced evidence that the marriage solemnized between the said *J. S.* and *B.* before either of the orders of removal, was a nullity, and such nullity was not disputed. — The question for the court of King's Bench was, whether or not the respondents were estopped either by the former orders of removal, or by the adjudication that he was a vagrant for leaving *his wife B.* who was in such adjudication considered as his *wife*, from giving any evidence whatever to prove the said marriage a nullity. The sessions affirmed the order of removal. — And in support of the order of sessions it was said, *inter alia*, that the first removal was bad, as being of the husband and wife upon the examination of the wife alone, who could only know the fact of her husband's settlement by hearsay from him. (Ld. *Ellenborough* C. J. That does not follow; she may know the fact as well as any other witness.) And it was held by all the Court, that the first order of removal was good upon the face of it, and, according to *Rex* v. *Silchester*, *Burr. S. C.* 551., and *Rex* v. *Rudgeley*, 8 *T. R.* 620. conclusive upon the question of marriage, which was involved in the judgment of the justices. Orders quashed. (See this case more fully, *post*, § XVII.)

Other parishes, however, are not estopped from disputing the validity of the marriage. R. v. Binegar.

Heretofore it hath been somewhat doubtful, what shall be deemed a sufficient marriage, so as that a woman shall gain a settlement thereby; and the courts have been favourable in admitting marriages, although not strictly solemnized according to the laws of the church; but by stat. 26 *Geo.* 2. *c.* 33. a great distinction was made between marriages solemnized before the 25th day of *March* 1754, and after that time. That act, after being repealed by stat. 3 *Geo.* 4. *c.* 75. as to § 11., which declared marriages by licence without consent of parents void, was repealed from 1st *November*, 1823, as to so much of it as was in force immediately before 18th *July*, 1823, by stat. 4 *Geo.* 4. *c.* 76. intituled, "*An act for amending the laws respecting the solemnization of marriages in* England," and its provisions are in a great degree repeated by stat. 4 *Geo.* 4. *c.* 76. What shall be deemed a sufficient marriage, so as to gain a settlement. 26 G. 2. c. 33. 4 G. 4. c. 76.

By stat. 4 *Geo.* 4. *c.* 76. § 8. No minister, &c. solemnizing marriage between persons, both or one of whom shall be under the age of 21 years after banns published, shall be punished by ecclesiastical censures for so doing without consent of parents or guardians required by law, unless such minister, &c. shall have notice of their dissent: and if such parents or guardians shall publicly declare, or cause to be declared, in the church or chapel where, and at the time, the banns are so published, their dissent to such marriage, such publication of banns shall be absolutely void. Of dissent of parents, &c. of minors.

§ 21. If any person shall solemnize matrimony in any other place than a church or such public chapel wherein banns may be lawfully published, unless by special licence, or shall solemnize matrimony without due publication of banns, or at any other time than between eight and twelve in the forenoon, unless licence be first obtained from some person having authority to grant the same, or if any person falsely pretending to be in holy orders shall solemnize matrimony according to the rites of the church of *England*; every such offender shall, on conviction, be guilty of felony, and transported for fourteen years; provided, that all prosecutions for such felony shall be commenced within three years after offence committed. Marrying without licence or banns, felony in the minister.

§ 22. Provided, That if any persons shall knowingly and wilfully intermarry in any other place than a church, or such public chapel wherein banns shall be lawfully published, unless by special licence as aforesaid, or shall knowingly and wilfully intermarry without due publication of banns, or licence from a person or persons having authority to grant the same, first had and obtained; or shall knowingly and wilfully consent to, or acquiesce in, the solemnization of such marriage by any person not being in holy orders, the marriages of such persons shall be null and void to all intents and purposes whatsoever. See *tit.* Marriage, Vol. III. Marriage void where persons wilfully marry in any other place than a church, &c.

Some of the offences punishable by the marriage act were before prohibited by the canons of the church, and some were subjected to pecuniary forfeitures by stats. 6 & 7 *W.* 3. *c.* 6. § 52. 7 & 8 *W.* 3. *c.* 35. § 2. and 10 *Ann.* *c.* 19. § 176., which are now merged in felony. See 15 *Vin. Abr.* 258. & 1 *East's P. C.* *c.* 13. § 6. Exceptions from the act. 6 & 7 W. 3. c. 6. 7 & 8 W. 3. c. 35. 10 An. c. 19.

In the case of *Chilham* v. *Preston*, *M.* 33 *Geo.* 2. *Burr. S.C.* 486. Marriage under age, by legiti-

Childham v. Preston.

mate children, without consent of parents.

1 *Blac. Rep.* 192. 2 *Bott*, 65. 1 *Nol. P.L.* 3*d edit.* 263, 264. Two justices removed *Edward Young*, *Rebecca* his wife, and *Mary* their child, from *Chilham* to *Preston*, near *Feversham*, both in *Kent*. And the sessions confirmed the order of the two justices. The case stated was, that the said *Edward Young*, being legally settled in *Preston*, (and not being then a widower,) was, on the 25th of *January*, 1758, without the consent of his father, who was then living, married by licence in the parish church of *Tenham*, to *Rebecca Drury* (who was settled in the said parish of *Tenham*, and who is removed to *Preston* by the said order, as the wife of the said pauper); the said *Edward Young* being then an infant of 20 years; and that afterwards, the said *Rebecca* was brought to-bed in the parish of *Chilham*, of the said *Mary*, removed by the order. It was argued in support of these orders, that the word *void* in the act may be construed *voidable;* and that it is highly unreasonable, that a virtuous young woman and her innocent children should be turned adrift, and be considered as a whore and bastards, without having any opportunity to contest so severe a judgment against them: Therefore that this marriage ought to be avoided by a sentence in the ecclesiastical court; and not in a collateral method, by an *ex parte* order of justices, made without hearing them or any person on their behalf. By Lord *Mansfield* C. J. This point will admit of no manner of doubt. There is this plain distinction between things *void* and *voidable*. Where the law makes a thing void for the benefit of the parties concerned, they may wave that advantage if they please. But the marriage act is avowedly made *against* both the contracting parties; and, therefore, they shall not wave the disabilities of it at their own option. The marriage is void and null to all intents and purposes, even though the parties should afterwards agree to it, wherever the fact appears directly contrary to the statute. And by the whole Court: Let the order be quashed as to *Rebecca* and the child, and confirmed as to the pauper *Edward*.

Consent to marriages of illegitimate minors before repeal of 26 G. 2. c. 33. § 11. by stat. 3 G. 4. c. 75. § 1. (*a*)

Before the repeal of stat. 26 *Geo.* 2. *c.* 33. (see p. 323.) it was held in *Rex* v. *Hodnet*, *H.* 26 *Geo.* 3. 1 *T. R.* 96. 2 *Bott*, 73. 1 *Nol. P. L.* 264. 3*d edit.*, that a marriage of illegitimate minors without consent was void under § 11. (*a*) In *Horner* v. *Liddiard*, called *Horner*, *E.* 1799. 1 *Hagg. Rep.* 337. 360. 1 *Nol. P. L.* 266. 3*d edit.* Lord *Stowell* held the same point, and that the necessary consent could be only given by a guardian appointed by chancery: and in *Priestley* v. *Hughes*, *E.* 49 *Geo.* 3. 11 *East*, 1. 1 *Nol. P. L.* 266. 3*d edit.* it was decided that the consent of the natural mother to a marriage by licence was not sufficient.

Marriages in Scotland between English subjects, is good.

Crompton v. *Bearcroft*, *M.* 8 *Geo.* 3. 2 *Bott*, 70. 1 *Nol. P.L.* 297. It was held that the marriage in *Scotland* of two persons, who being under age, had run away, without the consent of the woman's guardian, was good.

(*a*) 26 G. 2. c. 33. § 11. (repealed by stat. 3 G. 4. c. 75. § 1. from and after 22d July, 1822,) provided that marriages by licence, where either party not being a widow or widower is under twenty-one years of age, had without the previous consent of the father or lawful guardian, or one of them, or if no guardian, then of the mother, if living and unmarried, or if none such, then of a guardian appointed by chancery, shall be null and void.

By the custom of *Scotland*, cohabitation, and being commonly reputed man and wife, constitutes marriage. 2 *Burn's, Ecclesiastical Law*, 47. *Tyrwhitt's edit.*

The passage into *Scotland* being left open by the act, many persons have found their way thither to be married, in a manner very clandestine and irregular. And there hath been diversity of opinions concerning the validity of such marriages. Marriages in Scotland.

Ld. *Stair*, in his Institutions of the Law of *Scotland*, page 26. says, "The public solemnity of marriage is a matter of order, justly introduced by positive law, for the certainty of so important a contract; but not essential to marriage. Thence arises the distinction of public or solemn and private or clandestine marriages. And although persons who act contrary thereto may be justly punished, (as in some nations by exclusion of the issue of such marriages from succession,) yet the marriage cannot be declared void and annulled; and such exclusions seem very unequal against the innocent children. But by the custom of *Scotland* cohabitation, and being commonly reputed man and wife, validate the marriage and give the wife right to her thirds, who cannot be excluded therefrom, if she were reputed lawful wife, and not questioned during the husband's life, till the contrary be clearly proved."

Mr. *Erskine* in his Principles of the law of *Scotland*, pages 62. and 64. says, "It is not necessary that marriage be celebrated by a clergyman. The consent of parties may be declared before any magistrate, or simply before witnesses. When the order of the church is observed, the marriage is called regular; when otherwise, clandestine. Towards a regular marriage, the church requires proclamation of banns in the churches where the bride and bridegroom reside. Formerly, not only bishops, but presbyteries assumed a power of dispensing with proclamation of banns on extraordinary occasions: but this hath not been exercised since the revolution."

But whether clandestine marriages in *Scotland* of *English* parties who resort thither to evade the *English* law, shall be sustained in *England*, hath been doubted. And very learned men have questioned, notwithstanding that such marriages are valid by the law of *Scotland*, whether they are effectual in *England*. Where parties are bound by the laws of their own country to execute any important act or contract with certain solemnities, it is doubted whether they can elude their own law, by going purposely to another country where such solemnities are not essential, and then returning immediately when the act is done. It is a question of public law; and the most celebrated writers on public law have holden that such an act is fraudulent; it is *fraudem facere legi*, which the laws of all nations disallow. In the case of *Robinson* and *Bland*, *M.* 1 *Geo.* 3. 2 *Burr.* 1079., which was upon a security given in *France* for money there lost at play, wherein the locality of the transaction came in question, there is an *obiter* observation of Ld. *Mansfield* very remarkable. "As to the money won at play; by the rule of the law of *England*, no action can be maintained for it. To this it hath been objected, that the contract was made in *France*: Therefore the law of *France* must prevail, and be the rule of determination; by which law, it is alleged that the

Crompton v. Bearcroft.

money is there recoverable before the marshals of *France*, who can enforce obedience to their sentences by imprisonment. I admit that there are many cases where the law of the place of the transaction shall be the rule; and the law of *England* is as liberal in this respect as other laws are. It has been laid down at the bar, that a marriage in a foreign country must be governed by the law of that country where the marriage was had. Which, in general, is true. But the marriages in *Scotland*, of persons going from hence for that purpose, were instanced by way of example. *They* may come under a very different consideration; according to the opinion of *Huberus*, p. 33. and other writers. No such case hath yet been litigated in *England*, except one of a marriage at *Ostend*, which came before Ld. *Hardwicke;* who ordered it to be tried in the ecclesiastical court: But the young man came of age; and the parties were married over again; and so the matter was never brought to a trial."

Or in a foreign country.

But in *Bull. N. P.* p. 113. There is a short note of a cause wherein this point was afterwards determined upon an appeal to the delegates; *viz.* " *Crompton* and *Bearcroft*, 1*st December*, 1768. The appellant and respondent, both *English* subjects, and the appellant being under age, ran away without the consent of her guardian, and were married in *Scotland;* and on a suit brought in the spiritual court to annul the marriage, it was holden that the marriage was good."

So, it has been since taken as an undoubted proposition, that marriage celebrated in *Scotland* is such a marriage as would entitle the woman to dower in *England*. *Ilderton* v. *Ilderton*, 2 *H. Blac.* 145. 1 *Nol. P. L.* 266.

By Romish priests.

Marriages by *Romish priests*, whose orders are acknowledged by the church of *England*, have been deemed to have the effect of legal marriages in some instances, (at least before the marriage act 26 *Geo.* 2.; *per* Ld. *Ellenborough*, 10 *East*, 288. See 2 *Burn's Eccl. Law*, 8*th edit.*, by *Tyrwhitt*, p. 473, and note 7.)

Marriage abroad by a French Catholic priest in the French tongue, according to the English rite.

Rex v. *Brampton*, *M.* 49 *Geo.* 3. 10 *East*, 282. 1 *Nol. P.L.* 298. 300. Whilst the *British* army was at *St. Domingo*, two persons belonging to that army went to a chapel in the town of *Cape St. Nichola Mole* in order to be married; and there a service was read in the *French* language by a person dressed like a priest, and interpreted into the *English* language by a person who officiated as clerk. The pauper did not understand the *French* language, but by the interpreter she understood it was the marriage service of the established church of *England* read in *French*. She did not know that the person officiating was a priest. She received a certificate of marriage which she lost. There was no chaplain with the *British* forces at that time in *St. Domingo*. No evidence was given of the laws or usage of the island respecting the marriage ritual there. She and the man lived together as man and wife till his death, and she was removed to his settlement. The sessions were of opinion that this order was bad, and quashed it.— After argument, *per* Ld. *Ellenborough* C. J. (After stating the facts of the case, and saying that he must take them as believed to be true by the sessions.) First, considering it as a marriage celebrated in a place where the law of *England* prevailed; for I may suppose in the absence of any evidence to the contrary, that the law

of *England*, ecclesiastical and civil, was recognized by subjects of *England* in a place occupied by the king's troops, who would impliedly carry that law with them; then, was it a good marriage before the marriage act? Certainly, before that act a contract of marriage *per verba de præsenti* would have bound the parties: this was such a marriage and performed by one who publicly assumed the office of a priest, and appeared habited as such; of what persuasion does not appear: but even if it were performed by a *Roman* catholic priest, the case would be the same; for such a person would be recognized by our church as a priest capable of officiating as such, upon his mere renunciation of the errors of the church of *Rome*. But *Rex* v. *Fielding* shews that a marriage by a *Roman* catholic priest (before the marriage act) was effectual for that purpose, which was considered as a contract *per verba de præsenti*. In this case the ceremony was performed in a public chapel, instead of in private lodgings as in *Fielding*'s case. Considering therefore the case to be that the king's forces carried with them the law of *England* to *St. Domingo*, by which they and other subjects who accompanied them (in the absence of proof that any other law was in force there) may be considered as continuing to be governed, this would be a good marriage by that law. But supposing this law of *England* not to have been carried to *St. Domingo* by the king's forces, nor obligatory upon them in this particular, let us consider whether the facts stated would not be evidence of a good marriage according to the law of that country whatever it might be. And, indeed, after the ceremony of marriage, as it was understood and intended by the parties at the time to be, performed openly in a chapel, by a person appearing there as a priest authorised to perform the ceremony of marriage, and this followed by a cohabitation between the parties for eleven years afterwards; every presumption is to be raised in favour of its validity. I should have considered myself as safe in resting my opinion in favour of this marriage upon the law of *England*, independent of the provisions of the marriage act: But without the aid of that, I think every presumption must be made in favour of its validity according to the law of the country where it was so celebrated: having been performed there in a proper place, and by a person officiating as one competent to perform that function. The other judges agreed, and the order of sessions was quashed. R. v. ton.

The above elaborate judgment has now settled this part of the law upon a clear and indubitable basis.

Westbrook v. *Stratville*, *H.* 4 *Geo.* 1. 1 *Stra.* 79. 1 *Nol. P.L.* 272. *3d edit.* A prior marriage subsisting at the time of a second marriage, renders the second void *ab initio*. And the second (*i. e.* the supposed) wife (when plaintiff in an action against the husband) may give the felony in evidence in support of her action. *Rex* v. *Twyning*, 2 *B.* & *A.* 386. Vol. I. tit. Evidence. and 1 *Nol. P. L.* 304. A first subsisting marriage.

King's Norton v. *Northfield*, *E.* 21 *Geo.* 3. *Doug.* 659. *Cald.* 115. 2 *Bott*, 63. *n.* 1 *Nol. P.L.* 263. 3*d edit.* Two justices made an order to remove *Abigail Jones*, widow of *Joseph Jones*, from the parish of *King's Norton* to the parish of *Northfield*; which order the sessions confirmed upon appeal, and stated specially: that the Marriage solemnized in chapels erected subsequently to the last legalizing act.

pauper, *Abigail Jones*, being settled at *King's Norton*, in the year 1775, intermarried with *Joseph Jones*, a settled inhabitant of *Northfield* at *Buerlyhill* chapel in the parish of *Kingswinford* in the county of *Stafford*, which was erected in the year 1765, and then duly consecrated, and in which divine service had been publicly and regularly celebrated ever since; and wherein banns of matrimony had been often published, and marriages celebrated previous to the marriage in question: that the said chapel was a new one, erected since the marriage act, and not erected on the foundation of one that was ancient; and no act of parliament was obtained for erecting the said chapel or for celebrating marriages there. The two orders being removed into the Court of King's Bench, the question was, whether the marriage was void by the provisions of the said act? On shewing cause, it was contended that the words *usually published* in the act, ought to be considered to mean, usually at the time when the marriage in question took place. If so, there was enough stated in the case for the court to consider this as a chapel in which banns had been usually published.— Ld. *Mansfield* C. J. was for some time averse to determine a question of such serious consequence in a collateral way, on a settlement case. But, upon more consideration, said, I think we ought now to decide it. If there has been an abuse, we ought to stop it as early as possible. A delay might lead to a supposition that we doubt, when in truth we do not. The act clearly meant chapels existing at the time. I am of opinion that this marriage was void by the provisions of the statute. [Soon after this determination was known, stat. 21 *Geo.* 3. *c.* 53. was passed for making all marriages which had been solemnized in any parish church or public chapel erected since the statute of the 26 *Geo.* 2. and consecrated, valid in law, and to exempt the clergymen who had solemnized such marriages from the penalties of that statute.]

21 G. 3. c. 53.

44 G. 3. c. 77. By stat. 44 *Geo.* 3. *c.* 77. it is enacted, that all marriages solemnized or to be solemnized before 25th *March*, 1805, in churches or chapels erected since the making of stat. 26 *Geo.* 2. *c.* 33. and consecrated, shall be good and valid in law. And the ministers solemnizing them indemnified from the penalties of the former statute.

48 G. 3. c. 127. By stat. 48 *Geo.* 3. *c.* 127. The like provisions are enacted with respect to all marriages so solemnized or to be solemnized before the 23d *August*, 1808. The registers are to be preserved and to be evidence as in stat. 26 *Geo.* 2. *c.* 33.

59 G. 3. c. 134. Solemnizing marriages in new chapels built under stats. 58 & 59 G. 3. By stat. 59 *Geo.* 3. *c.* 134. § 6. Marriages may be solemnized in the chapels of consolidated chapelries, (*viz.* parts of contiguous parishes and places united into separate districts for ecclesiastical purposes,) which were built by order of the Commissioners for Building New Churches; and by § 16. the same Commissioners may direct whether marriages shall be had or not in chapels erected by them in parishes divided into ecclesiastical districts or district parishes.—By stat. 4 *Geo.* 4. *c.* 76. § 3. "the bishop of the the diocese, with the consent of the patron and the incumbent of the church of the parish in which any public chapel having a chapelry thereunto annexed may be situated, or of any chapel situated in an extra-parochial place, signified to him under their hands and seals respectively, may authorize by writing under his hand and seal the publication of banns and the solem-

4 G. 4. c. 76. Bishop with consent of patron and incumbent may authorize publication of banns in any public chapel.

nization of marriages in such chapel for persons residing within such chapelry or extra-parochial place respectively, and such consent, together with such written authority shall be registered in the registry of the diocese." 4 G. 4. c. 76.

§ 5. Provided, "That in every chapel in respect of which such authority shall be given as aforesaid, there shall be placed in some conspicuous part of the interior of such chapel, a notice in the words following: 'Banns may be published and marriages solemnized in this chapel.'" Notice to be placed in such chapel.

St. Devereux v. *Much Dewchurch*, *E.* 2 *Geo.* 3. *Burr. S. C.* 506. 1 *Blac. Rep.* 367. 2 *Bott*, 66. 1 *Nol. P.L.*.299. 303. The question before the sessions was, whether the marriage of *John* and *Susannah Meredith* was sufficiently proved? One witness made oath, that he and another witness were present on the 7th day of *February*, 1758, when a marriage was solemnized in the parish church of *St. Devereux*, between the said *John* and *Susannah Meredith*, by the minister of the said parish by banns. And it appearing to the said sessions, that the entry of the said marriage in the register book of the said parish was made in manner following, *viz.*: "1758. *John Meredith* and *Susannah Jenkins* were married by banns;" but neither the minister, parties, nor witnesses signed the said entry, and that no other entry of the said marriage was ever made; they therefore were of opinion, that the marriage was not legally proved. On shewing cause, it was urged in support of their opinion, that this appeared upon the state of the case, to be a void marriage. For although the omission of banns was originally only an offence against the ecclesiastical law, and even after the 7 & 8 *W.* 3. *c.* 35. § 2., the minister and clerk, and man married without licence or banns, were only subject to a penalty; yet since the act of the 26 *Geo.* 2. *c.* 33. an entry of this, properly signed, is become so essential a circumstance, that without it the marriage itself is null and void. — But the Court were of a different opinion. And Ld. *Mansfield* C.J. said, it was not incumbent on the persons married to prove that the banns were published, nor doth the entry directed to be made affect the validity of the marriage. In a suit perhaps in the ecclesiastical court for jactitation of marriage, it may be necessary to prove that all the solemnities of the marriage act have been punctually and regularly complied with: but God forbid that in other cases (the legitimacy of children and the like) the usual presumptive proofs of marriage should be taken away by this statute. It was canvassed in parliament, at the time when the act was made, and universally agreed by all whose opinions were worth having, that it would not become necessary to prove the publication of banns. But at the same time he declared, that it was a matter of great public concern for the preservation of pedigrees (which were now become very difficult to prove): and the entry ought to have been made according to the directions of the act. He went so far as to declare, that an information ought to be granted by the Court against the minister for omitting it, if it should appear clearly that it was owing to his neglect; and that such information should be prosecuted by the attorney-general at the king's expence; which he did not doubt would be readily directed, upon the recommendation of the Court.

Not necessary to prove publication of banns, but it is enough for one present at the ceremony to prove the fact of marriage.

Nor necessary to produce the copy of the register.

It is not necessary to call one of the subscribing witnesses to the Of identity.

register, to prove the identity of the persons married, for a copy of the register is sufficient evidence of the marriage, in fact, between persons of the description there mentioned; and any evidence which satisfies a jury as to the identity of the parties being the persons married, is sufficient. As if the hand-writing of the husband and wife to the register is proved; or bell-ringers came to the parties, and said they rung for the wedding, and were paid by them; or people dining at the wedding-dinner; or other circumstances to ascertain the parties. *Bull. N. P.* 27, 28. *Phil. Ev.* 6*th edit.* 390.

Non-publication of banns.

Though according to the preceding case of *St. Devereux* it is not necessary for the party insisting on the marriage to prove publication of the banns, yet the want of due publication may be shewn on the other side. *Standen* v. *Standen, Peake's N. P. Ca.* 32. 1 *Nol. P. L.* 299.

A person whose baptismal and surname was A. L. was married by banns by the name of G. S. having been known in the parish where he resided and was married by that name only, from his first coming into the parish till his marriage, which was about three years. Held, that the marriage was valid, and therefore the wife and children entitled to the husband's settlement.

Rex v. *Billingshurst, M.* 55 *Geo.* 3. 3 *M.* & *S.* 250. 1 *Nol. P. L.* 297. Removal from *Salehurst* to *Billingshurst*, subject, &c.—The pauper, whose baptismal and surname is *Abraham Langley*, and whose legal settlement is in *Billingshurst*, was married to his present wife in the parish of *Lamberhurst*, by banns, about four years ago, by the name of *George Smith*. Previously to his marriage he had resided about three years at *Lamberhurst*, during which time, and from his first coming into that parish, and during all the time he remained there, and afterwards until and at the time of his removal, he was known by the name of *George Smith* only. The wife and children have no settlement in *Billingshurst*, unless they have acquired one by the marriage. After argument Ld. *Ellenborough* C. J. said, all that the law requires on this subject is that marriages shall be solemnised either by licence, or publication of banns, otherwise the statute 26 *Geo.* 2. *c.* 33. § 8. declares that they shall be void. The statute does not specify what shall be necessary to be observed in the publication of banns; or that the banns shall be published in the true names; but certainly it must be understood as the clear intention of the legislature that the banns shall be published in the true names, because it requires that notice in writing shall be delivered to the minister of the true christian and surnames of the parties seven days before the publication: and unless such notice be given he is not obliged to publish the banns. The question then is, has there been in this case that which is required, a due notification by the minister, on a *Sunday* in time of divine service, of one of the persons intending to contract marriage. Now it appears that such notification has been made by the name of *George Smith*, by which name alone the party was known in the place where he resided, and which he had borne for three years prior to the celebration of the marriage, in that place, and that he was not known there by any other name. It would lead to perilous consequences if in every case an inquiry were to be instituted, at the hazard of endangering the marriage of a woman, who had every reason to think she was acquiring a legitimate husband, whether the name by which the husband was notified in the banns were strictly his baptismal name, or whether at the period of his baptism he may not have received some other name. What the consequences might be of encouraging such inquiries, as to the avoiding of marriages, and bastardizing the issue of them, it is not very dif-

ficult to imagine. The object of the statute in the publication of banns was to secure notoriety, to apprise all persons of the intention of the parties to contract marriage; and how can that object be better attained than by a publication in the name by which the party is known? If the publication here had been in the name of *Abraham Langley*, it would not of itself have drawn any attention to the party, because he was unknown by that name, and its being coupled with the name of the woman who probably was known, would perhaps have led those who knew her, and knew that she was about to be married to a person of another name, to suppose either that these were not the same parties, or that there was some mistake. Therefore the publication in the real name, instead of being notice to all persons, would have operated as a deception; and it is strictly correct to say, that the original name in this case would not have been the true name within the meaning of the statute. On these grounds I think that the act only meant to require that the parties should be published by their known and acknowledged names, and to hold a different construction would make a marriage by banns a snare, and in many instances a ruin upon innocent parties. The Court therefore cannot lend itself to a construction which would be pregnant with such consequences. *Le Blanc* J. The object of the marriage act was to insure notoriety to the transaction, and, I think, the Court recollecting that, cannot say that a marriage by banns, published in the names by which alone the party was known, is a marriage without publication of banns. The argument is, that a marriage by publication of banns means by publication of banns in the real names of the parties only; but the statute has said no such thing. If the banns be published in the names of the party by which alone he is known, and there is no fraud, whether that be the true christian or surname of the party or not, I think the marriage is good within the meaning of the statute. Therefore I am of opinion that upon the present occasion every thing was done that was sufficient to give that notification of the marriage which it was the object of the marriage act to insure. Order of sessions confirmed.

R. v. Billingshurst.

Rex v. *Burton-upon-Trent*, *H.* 55 *Geo.* 3. 3 *M.* & *S.* 537. 1 *Nol. P.L.* 297. Removal from *Grooby* to *Burton-upon-Trent*, subject, &c. The pauper's father, who was settled at *Desford*, and whose real name was *Joseph Price*, was married at *Leicester*, by licence, by the name of *Joseph Grew*, having changed his name to *Grew* because he had deserted from the army, and he was known by that name only at *Leicester*, where he lodged at the time of his marriage, and where he had resided sixteen weeks. He never passed by any name but *Price* in his father's family, and in the place where they resided. His wife did not know his real name till a fortnight after the marriage, when he told it her. The pauper was the issue of this marriage, and was born at *Burton-upon-Trent*, and after his birth his parents were married by the true name. The sessions considered the first marriage as invalid, and therefore that the pauper was not entitled to his father's settlement. In support of the order of sessions it was argued, that the ceremonies required by the law to constitute a valid marriage, were for the public benefit as well as individual security, and therefore, whether the marriage be by banns or licence, it is essential that it should be by

A marriage by licence, not in the man's real name, but in the name which he had assumed because he had deserted, he being known by that name only in the place where he lodged and was married, and where he had resided sixteen weeks, was held a valid marriage.

R. v. Burton upon-Trent.

the true name of the parties, otherwise it is a nullity. And this differs from *Rex* v. *Billingshurst, ante,* 300., because there the party had acquired a name, and an acquired name becomes the true name. But here the name, beside that it was assumed for sixteen weeks only, was assumed for the purpose of a fraud, in order to conceal the crime of desertion. Ld. *Ellenborough* C. J. There is not any occasion to trouble the other side. If this name had been assumed for the purpose of fraud in order to enable the party to contract marriage, and to conceal himself from the party to whom he was about to be married, that would have been a fraud on the marriage act, and the rights of marriage, and the Court would not have given effect to any such corrupt purpose. But where a name has been previously assumed so as to have become the name which the party has acquired by reputation, that is, within the meaning of the marriage act, the party's true name. The same law has been recognised in the case of negotiable instruments, where if a party sign an instrument in a name assumed by him for other purposes a considerable time before, such signature will not amount to a forgery; but otherwise if he assume a name by which he had never been known before for the purpose of the fraud. Now here the party assumed the name for the purpose of concealment and not of fraud upon the marriage, and he was known by that name alone for sixteen weeks in the place where he was married. It seems to me, therefore, that he had acquired the name, and that to have had a licence in any other name would have been a fraud on the marriage act. — *Le Blanc* J. The name was assumed by the father for the purpose of concealing himself as a deserter from his majesty's service, and not with a view to impose upon the woman whom he married. — *Bayley* J. The sessions may always draw the line, whether the name was assumed for a fraudulent purpose as it regards the marriage or not. Orders quashed. See 2 *East's P. C.* 967, 968.

In all cases but of prosecution for bigamy, and actions of crim. con. reputation is good proof of marriage, where direct proof cannot be obtained.

Morris v. *Miller, E.* 7 *Geo.* 3. 4 *Burr.* 2057. 1 *Blac. Rep.* 632. 2 *Bott,* 69. On an action for criminal conversation with the plaintiff's wife, the question was, whether, to support the action, there must not be proof of an actual marriage? The fact was, they were married at *Mayfair* chapel. The register or books could not be admitted in evidence. — *Keith,* who married them, was transported; and the clerk, who was present at the marriage, was dead. So that the plaintiff could not prove the actual marriage by any evidence. But the counsel for the plaintiff proved articles between the man and his wife, made after marriage, for settling of the wife's estate, with the privity of relations on both sides. They proved cohabitation, name, and reception of her by every one as his wife, and insisted that this evidence was admissible; and that lately in ejectment, before Ld. *Mansfield,* this sort of evidence was offered and received. Unto which Ld. *Mansfield* said, it certainly may be done so, in all cases except two: one is in prosecutions for bigamy; and this case (if such proof cannot be here received) is the other. It was proved further, that the defendant *Miller* confessed to the landlord of the lodgings, that she was Captain *Morris*'s wife, and that he the defendant had committed adultery with her: and confession is the strongest evidence. — Ld. *Mansfield:* I do not at present remember any action for criminal conversation, when an actual

marriage was not proved. Proof of actual marriage is always used and understood in opposition to proof by cohabitation, reputation, and other circumstances from which a marriage may be inferred: but we will take time to consider of it. Afterwards, he delivered the resolution of the Court: — In these actions there must be proof of a marriage in fact, as contrasted to cohabitation and reputation of marriage arising from thence. Perhaps there need not be strict proof from the register, or by a person present; but strong evidence must be had of the fact, as by a person present at the wedding dinner, if the register be burnt, and the minister and clerk are dead. The case of bigamy is stronger than this. And on an indictment for that offence *Dennison* J. on the *Norfolk* circuit ruled, that though a lawful canonical marriage need not be proved, yet a marriage in fact (whether regular or not) must be shewn. But except in these two cases, I know of none, where reputation is not a good proof of marriage.

Morris v. Miller.

Rex v. *Stockland*, *T.* 2 *Geo.* 3. *Burr. S. C.* 508. 2 *Bott*, 67. 1 *Nol. P. L.* 299. *John Moes* and *Elizabeth Mason*, father and mother of the pauper, being both resident in the parish of *Chardland*, about the year 1723, went from thence together, declaring they were going to be married; and soon returned, declaring they had been married: and from thenceforward cohabited as man and wife for about 30 years, until the death of the said *Elizabeth*. The pauper was born at *Chardland* in 1725, and there baptized, and his baptism registered as the son of *John* and *Elizabeth Moes*. The said *John* and *Elizabeth*, some years before the death of the said *Elizabeth*, removed from the said parish of *Chardland* to the parish of *Stockland*, and there acquired a settlement by renting a tenement of 50*l*. a year. They carried with them, from *Chardland* to *Stockland*, the said pauper, their son, whose settlement depended upon this question, viz. Whether the said *John* and *Elizabeth*, the father and mother of the pauper, were to be considered as husband and wife at the time of his birth? It was contended at the sessions, that the said *John* and *Elizabeth* were never married; or if they were, that the said *Elizabeth* had a former husband then living. Concerning which, several witnesses having been examined on both sides, the said *John Moes* the father was produced, in order to prove that he and the said *Elizabeth* were never married, and that the supposed other husband was then living. But the Court refused to receive his testimony. And on consideration of the evidence before the Court, they were of opinion that the marriage of *John* and *Elizabeth* was sufficiently proved, and that the pauper gained a settlement at *Stockland*, as part of their family, and discharged the order of the two justices for removing him to *Chardland*. It was moved to quash the order of sessions. The objection was, that they ought to have admitted the father to give evidence of his never having been lawfully married. — But Ld. *Mansfield* C. J. seemed to think, that 30 years cohabitation as man and wife was sufficient proof to the justices to found an order of removal upon. However, a rule was made to shew cause. But on the last day of the term the objection was given up; and, by consent, the order of sessions was affirmed, and the recognizance discharged.

What shall be deemed sufficient evidence of a marriage, so as to gain a settlement: Whether after thirty years cohabitation as man and wife, the husband shall be permitted to deny his marriage? Quære.

Rex v. *Bramley*, *T.* 35 *Geo.* 3. 6 *T. R.* 330. 2 *Bott*, 749. 1 *Nol.*

A mother may be called to

R. v. Bramley.

prove that she was never married to a person with whom she cohabited, and who was reputed her husband, though by such evidence she bastardize her issue.

P. L. 299, 300. *Sarah Ward*, widow of *J. Ward*, and her three children, were removed from *Leeds* to *Bramley*. Upon appeal, the respondents produced evidence of the settlement of *J. Ward* being at *Bramley;* and, in order to prove his marriage with the pauper, witnesses were produced, who proved that they had cohabited and lived together as man and wife, and were reputed to be man and wife till his death. The appellants offered to produce *Sarah* as a witness, to prove that she never was married, or, if she was, it was in *Ireland*, under such circumstances as rendered it void. The appellants also offered witnesses to prove the declarations made both by *James* and *Sarah*, at different times, that they were never married. The respondents insisted that this evidence was inadmissible; and the sessions being of that opinion, rejected the same, and confirmed the order, subject to the opinion of the Court of K. B., whether the evidence offered were admissible or not. — By Ld. *Kenyon* C.J. This evidence was certainly admissible, though the justices were to judge of the effect of it. In the case of *Rex* v. *St. Peter's*, it was expressly held, that the supposed husband was a competent witness to disprove the marriage. There are also many other cases, in which it has been decided, that the parents may be called as witnesses with respect to the legitimacy of their issue, and if they may be called to prove that they are legitimate children, there is no reason why they should be considered as incompetent when called to prove that the children are illegitimate; but in all these cases such testimony is open to great observation.

So also it had been determined in *Goodright* v. *Moss*, *E.* 17 *Geo.* 3. 2 *Cowp.* 591. that the father and mother might be examined to the fact of marriage.

Marriage fraudulently procured.

Although it be generally true that no settlement shall be good, which is brought about by fraud or practice; yet it seemeth that the rule faileth in this case, and that if the marriage take effect, the settlement is good, for the following cases do proceed upon such suppositions: —

Rex v. *Edwards*, *M.* 11 *Geo* 1. 8 *Mod.* 321. 1 *Sess. Ca.* 265. 1 *Bott*, 334. 1 *Nol. P.L.* 259 (*n*). 3*d edit.* The overseers were indicted for a conspiracy, in giving a small sum of money to a poor man of another parish, for marrying a poor lame woman of their own parish, and so by this contrivance conspiring to settle the woman in the other parish, where the husband was settled. By the Court: If there be a conspiracy to let lands of 10*l.* a-year to a poor man, in order to gain him a settlement, or to make a certificate man a parish officer, or to send a woman big of a bastard child, into another parish to be delivered there, and so to charge the parish with the child, these are certainly crimes indictable. But this indictment was quashed for want of averment, that the woman was last legally settled in the parish relieved by her marriage.

Rex v. *Parkins*, *H.* 6 *Geo.* 2. 1 *Sess. Ca.* 176. A single woman of *Studley*, big with child of a bastard, was sent back by *S. Parkins*, overseer of *Studley*, threatened with all the severity of the law to force her to marry a stranger of another parish, against both his and her consent, he giving five guineas to the husband, and keeping him in liquor. — By the Court: Shew cause why information should not go.

Rex v. *Watson*, *M.* 17 *Geo.* 2. 1 *Wils.* 41. An information was granted against *Watson* and others, for procuring one *Vine*, a soldier, who had a settlement in the parish of *Brill*, to marry a poor woman who was an idiot, and chargeable to the parish of *Dorton*, by giving a certain reward to *Vine*, whereby she became chargeable to *Brill*. And in *Rex* v. *Tarrant*, *T.* 7 *Geo.* 3. 1 *Bott*, 338. And *Rex* v. *Crompton et al. H.* 23 *Geo.* 3. the same point was agreed.

§ VIII. Settlement by Hiring and Service.

By stat. 13 & 14 *C.* 2. *c.* 12. § 1. (see p. 266.) After reciting the evils resulting from the state of vagrancy of the poor, it was enacted that it should be lawful upon complaint made by the churchwardens and overseers of the poor to any justice of peace, within 40 days after any such person coming so to settle as in the act aforesaid (alluding to the vagrancy mentioned in the recital of the act), in any tenement under the yearly value of 10*l.* for any two justices (1 *Q.*) of the division where any person likely to be chargeable should come to inhabit, by their warrant to remove such person to such parish where he was last legally settled, either as a native, householder, sojourner, apprentice, or servant, for the space of 40 days at least, unless he should give sufficient security for the discharge of the said parish, to be allowed by the said justices.

13 & 14 C. 2. c. 12. The statutes relating to settlements.

Persons removeable, unless security given for the discharge of the parish.

By § 3. It was provided, nevertheless, that it should be lawful for any person to go into any county, &c. to work at any work, so that he carried with him a certificate from the minister of the parish and one of the churchwardens and one of the overseers for that year that he had a dwelling house or place in which he inhabited, and had left wife and children, or some of them there, and was declared an inhabitant there: and then in case of such person's not returning when the work was finished, or falling sick or impotent, the said justices might convey such person to such place of habitation.

Carrying certificates with them.

By stat. 1 *J.* 2. *c.* 17. § 3. The 40 days' continuance of such person in a parish, intended by the 13 & 14 *Car.* 2. to make a settlement, shall be accounted from the time of his delivery of notice in writing of the house of his abode, and the number of his family to one of the churchwardens or overseers of the poor of the parish to which he shall so remove.

1 J. 2. c. 17. Forty days from delivery of notice.

By stat. 3 & 4 *W.* & *M. c.* 11. § 3. It was enacted, that the notice in writing (required by the stat. of *J.* 2.) should be by the churchwarden or overseer caused to be read publicly immediately after divine service in the church or chapel of the parish or town on the next Lord's day when there should be divine service therein; and that the 40 days' continuance intended by the said acts (of *C.* 2. and *J.* 2.) to make a settlement should be accounted from the said publication of the said notice.

3 & 4 W. & M c. 11. Notice to be published.

But by stat. 35 *Geo.* 3. *c.* 101. § 3. No person coming into any parish, township, or place, shall from the passing of this act, be enabled to gain any settlement therein by delivery and publication of notice in writing.

35 G. 3. c. 101

By stat. 3 & 4 W. & M. c. 11. § 4. *No soldier, seaman, shipwright, or other artificer or workmen employed in their majesties' service, shall have any settlement, in any parish, port town, or other*

3 & 4 W. & M. c. 11. No soldiers, &c to have settle-

3 & 4 W. & M. c. 11. *town, by delivery and publication of a notice in writing as aforesaid, unless the same be after the dismission of such person out of their majesties' service.*

ment before dismission.

Service for a year, of person without wife or child, a settlement.

By § 7. *It is enacted,* "*That if any unmarried person, not having child or children, shall be lawfully hired into any parish or town for one year, such service shall be adjudged and deemed a good settlement therein, though no such notice in writing be delivered and published, as is herein-before required.*"

8 & 9 W. c. 30. Hiring and service to be continued and abided in.

By stat. 8 & 9 *W. c.* 30. § 6. "Whereas some doubts have arisen touching the settlement of unmarried persons, not having child or children, lawfully hired into any parish or town for one year." *it is enacted and declared,* that no such person so hired as aforesaid, shall be adjudged or deemed to have a good settlement in any such parish or township, unless such person shall continue and abide in the same service during the space of one whole year.

35 G. 3. c. 101. Not to be removed till actually chargeable.

By stat. 35 *Geo.* 3. *c.* 101. § 1. The justices shall remove no poor person from the parish or place where he shall be inhabiting, until such person shall become actually chargeable.

Exclusions of settlements.

There are also provisions enacted by statute, precluding persons coming into parishes under certain circumstances from acquiring any settlement in those parishes whilst they are within the operation of those provisions.

3 W. & M. c. 11.

By stat. 3 *W. & M. c.* 11. § 7. (as has been before stated,) persons hired into any parish must be unmarried and also without children at the time of hiring, in order to the acquiring a settlement in that parish by service under such hiring.

9 & 10 W. c. 11.

And by stat. 9 & 10 *W. c.* 11. No person who shall come into any parish by such a certificate, (as in 8 & 9 *W.* 3. *c.* 30. is mentioned,) shall be adjudged by any act whatsoever, to have procured a legal settlement in such parish, unless he shall really and *bonâ fide* take a lease of a tenement the value of 10*l.*, or shall execute some annual office in such parish, being legally placed in such office.

12 Ann. st. 1. c. 18. After 24th June, 1713, any person bound apprentice, or being a hired servant, to one who came into a parish by certificate, shall not gain a settlement there by reason of such apprenticeship, &c.

And by stat. 12 *Ann. stat.* 1. *c.* 18. § 2. *If any person whatsoever, who, upon or after the 24th of* June, 1713, *shall be an apprentice, bound by indenture to, or shall, upon or after the said 24th of* June, 1713, *be a hired servant to or with any person whatsoever, who did come into or shall reside in any parish, township, or place, in that part of* G. B. *called* England, *by means or licence of such certificate, and not afterwards having gained a legal settlement in such parish, township, or place, such apprentice, by virtue of such apprenticeship, indenture, or binding, and such servant by being hired by, or serving as a servant, as aforesaid, to such person, shall not gain or be adjudged to have any settlement in such parish, township, or place, by reason of such apprenticeship or binding, or by reason of such hiring or serving therein; but every such apprentice and servant shall have his and their settlements in such parish, township, or place, as if he or they had not been bound apprentice or apprentices, or had not been an hired servant or servants to such person, as aforesaid; any act or acts of parliament to the contrary notwithstanding.*

33 G. 3. c. 54.

By stat. 33 *Geo.* 3. *c.* 54. § 24. [for the encouragement of friendly societies.] No hired servant to any person who did come into or shall reside in any parish, township, or place, under the authority of this act, and not afterwards having gained a legal settle-

ment in such parish, &c., shall gain or be adjudged to have any settlement therein by reason of such hiring or service therein, but all such servants shall have their settlements therein as if they had not been so hired. See Vol. II. tit. Friendly Societies. 33 G. 3. c. 54.

52 G. 3. c. 72. Residence in forest not to gain a settlement in Binsted.

By stat. 52 *Geo.* 3. *c.* 72. § 8. It is provided, that no person shall, by hiring and service, either for the preservation of the woods or plantations, or the game in the forest of *Alice Holt* in the county of *Southampton*, gain thereby any settlement in the parish of *Binsted* in the said county in which the said forest is situated.

General rules as to the requisites to establish a settlement by hiring and service.

In order to establish a settlement by hiring and service, as it is called, or (to speak more accurately) by a forty days' residence during a year's service, connected with a hiring for a year, it will appear from the statutes before mentioned, and the cases which will be hereafter detailed, that the person for whom such settlement is claimed, whether male or female, *British* subject or foreigner, must have been hired lawfully, in respect both of his legal capacity to make any contract at the time of the hiring, and of his right of self-disposal at that time for that particular engagement; and such person must also have been at that time unmarried, and unencumbered with any child whose settlement would follow its parents, and unimpeded by suspended order of removal. Whether the hiring were to a master or to a mistress, to one, — or jointly to more than one: — whether or not such masters or mistresses, or any of them, had any settlement of their own there or elsewhere, every such master or mistress must, at the time of the hiring, have had a legal capacity to make such a contract. And there can be no hiring between parties, related to one another as husband and wife. The transaction must have been clear of fraud and of compulsion. It must have amounted to such an hiring, express or implied, as would create between the parties, the relation of master and servant; the contract of hiring must either have been entered into by themselves, or, if by others on their behalf, must have been subsequently adopted by them as their own, by which contract the party for whom the settlement is claimed, (whether hired into a parochial or extra-parochial place, and whatever the employment, whatever the lodging, whatever the nature, the amount, or the period of his remuneration,) must, constructively at least, have been hired for an entire term, either certain, or conditionally determinable, of a year, to be uninterrupted by the absolute exception of any time, however short, and to be consecutively reckoned; the whole term of which year must have been an already created term before the lapse of a single day of it.

The several cases of settlement by HIRING AND SERVICE, will be considered in the following order, *viz.*:

1. *Who may or may not acquire a settlement by hiring and service.*
2. *The contract.*
3. *The performance of the contract; and herein of what shall be deemed a* dissolution, *and what a* dispensation.
4. *The place in which the settlement shall be, as far as* residence *is concerned.*

1. Who may or may not acquire a Settlement by Hiring and Service. (See stats. *ante.*)

A widower is within the word unmarried.

"*Unmarried Person.*"] *Anthony* v. *Cardigan, E.* 12 *W.* 2 *Bott,* 177. 1 *Nol. P. L.* 339. It was decided that a *widower* was within the spirit of the act, and might gain a settlement by hiring and service.

If a married man hire himself subject to approbation, and his wife die before the agreement is complete, and then the agreement be completed, a settlement will be gained by service under it.

In *Rex* v. *Bank Newton, E.* 31 *Geo.* 2. *Burr. S. C.* 455. 2 *Bott,* 179. 1 *Nol. P. L.* 339. The pauper, then married, agreed on the 16th of *February* with the son of *H. W.* to serve *H. W.* for a year from the 24th of that month at 5 guineas wages, provided the said *H. W.* should approve the said terms. On the 18th the wife died: on the 24th the pauper went into the service of *H. W.* who on that day agreed to the terms made by his son. By the Court: It is clear that the hiring was on the 24th, for the father might have dissented from the conditional agreement made by the son on the 16th, a settlement was therefore gained by the hiring and service.

The time to be attended to, is the time when the contract is made. Marrying between the hiring and entering into the service will not defeat the settlement, if there be no fraud.

Rex v. *Allendale, T.* 29 *Geo.* 3. 3 *T. R.* 382. 2 *Bott,* 180. 1 *Nol. P. L.* 338. *J. D.* and his wife were removed from *Lambley* to *Allendale.* The sessions confirmed the order, subject to the opinion of the Court on the following case:—In *February,* 1786, the pauper, *being then an unmarried man,* not having child or children, was hired for a year to serve *T. B.* at *Allendale,* from *May-day* 1786 to *May-day,* 1787, as a hind. It is the custom of the country to hire married men as hinds, because their wives are bound to perform certain services for the master in time of harvest; and when the wife of a hind dies, he must hire a female servant to perform such services. It was in the contemplation of both the master and servant, and perfectly understood by them at the time of hiring, that the pauper would marry before he entered upon his service. After such hiring, and before the commencement of his service, he married his wife, the other pauper, and *entered upon his service a married man,* and served out the whole year a married man at *Allendale.* Against the order of sessions it was contended, that the *time when the service commences,* and not the *time of the hiring,* is the criterion by which the Court is guided, in determining whether or not the case comes within the statute.—By Lord *Kenyon* C. J. The principle on which this question must be decided has been long since settled. In the cases of *Farringdon* v. *Witty,* and *Rex* v. *Bank Newton,* the Court seemed to think, that the time to be attended to was *the time when the contract was made,* which has ever since been considered as the rule; he was unmarried when he entered into his contract; and whether he married the day before the service commenced or afterwards, it makes no difference. *Buller* J. said, that neither the custom of the country, nor the agreement between the parties, went to compel this pauper to marry before he entered upon this service; he was at liberty to do so or not, as he pleased. The custom of the country only amounts to this, that part of the service is to be performed by a female; it is therefore indifferent to the master whether the servant be married or not, because if he be single he must hire some female to perform those services.

And in the same term the same point was given up without argument, in *Rex* v. *Stannington*, 3 *T. R.* 385. 2 *Bott*, 181. *n.* 1 *Nol. P. L.* 338.

And in the same case of *Rex* v. *Allendale*, it seems (by *Buller* J.) that if the marriage take place during the interval between the contract of hiring and the commencement of service, for the purpose of fraudulently evading the statute, such fraud will defeat the settlement.

But a marriage taking place intermediately by fraud defeats the settlement.

In *Farringdon* v. *Witty*, *E.* 1 *An.* 2 *Salk.* 527. 2 *Bott*, 295. Where a servant hired for a year, served half a year and then married, it was determined that the marriage did not defeat the settlement, and that the contract was not dissolved by the marriage. So also in *Rex* v. *Clent*, *M.* 1 *Geo.* 1. 2 *Bott*, 296. And in *Rex* v. *Sutton*, 2 *Bott*, 296. And in *Rex* v. *Hanbury*, *T.* 26 & 27 *Geo.* 2. *Burr. S. C.* 322. 2 *Bott*, 297. 1 *Nol. P. L.* 338.

A marriage during the service does not defeat the settlement.

Rex v. *St. Giles's*, *T.* 13 *Geo.* 3. *Cald.* 54. 2 *Bott*, 297. 1 *Nol. P. L.* 457. The pauper, an unmarried man, hired himself generally, and continued for 7 months in service. Then he married and remained 4 months longer with his master; then he removed to *St. Giles's*, *Reading* with his wife, sleeping there for seven months, but serving the same master all that time, without coming to any new hiring; and then left him. And by the Court: It has been determined in *Rex* v. *Hedsor*, and *Rex* v. *Hanbury*, that marriage does not dissolve the contract if it happen during the year in which a man has been hired as a single man. Here the pauper was incapable of making a new contract at the commencement of the second year: and at that time he was a married man. If at the end of the first year a new agreement had been made between the master and servant, a service under that could not have given the pauper a settlement: then he shall not by implied contract do that which he could not do in express terms.

A settlement cannot be gained by a continued hiring, if at the second hiring the servant were married.

And a service continuing for eighteen months shall be considered as having commenced afresh at the end of the first twelve months.

"*Not having child or children.*"] In the before recited case of *Anthony* v. *Cardigan*, a person having a daughter which was married and lived settled elsewhere, hired himself for a year; and it was decided that he was a single person within the meaning of the act, though not expressly within the letter of it. That the meaning of the statute was, that he might not bring any consequential damage to the parish; which he could not possibly do here. And they held that the man, notwithstanding he had a child, gained a settlement by virtue of that service. *Fol.* 131. 2 *Bott.* 177.

An emancipated child is not within the meaning of child or children in 3 W. c. 11. § 7.

Rex v. *Cowhoneyborne*, *T.* 48 *Geo.* 3. 10 *East*, 88. 1 *Nol. P. L.* 339. 345. The case stated, that the pauper, after his wife's death, hired himself and served 5 years under a hiring for a year at *T.* On the death of the pauper's wife, *N.* his brother-in-law took the pauper's child, an infant, out of kindness to him. The pauper's daughter also (11 years of age) went with his consent to *N.* the brother-in-law, to nurse her sister, who died in a year. She lived with *N.* for some time, under circumstances which in the opinion of the Court, amounted to emancipation; and they therefore held agreeably to the foregoing cases, that the pauper was an unmarried person within the words of the act at the time of entering into his service at *T.*, and did therefore gain a settlement there by hiring and service. This case, and the general questions of emancipation, have been considered, *ante*, p. 304.

But a child whose emancipation is only inchoate, is within the act.

In *Rex* v. *New Forest*, *H.* 34 *Geo.* 3. 5 *T.R.* 478. 2 *Bott*, 182. 1 *Nol. P. L.* 340. On *Martinmas-day*, 1777, *E. Coates* hired himself and served a year in the township of *New Forest;* on 22d *December*, 1777, he married. The pauper, a legitimate son of *E. C.* by a former wife, on the same *Martinmas-day*, (being under sixteen, and without having gained a settlement) hired himself for a year to *R. N.* of *Ellerton*, and served the year.—*Per* Ld. *Kenyon* C. J. The construction which the Court has put upon the 3 *W.* & *M. c.* 11. § 7. is, that though the person so hired have children, yet if they have gained settlements for themselves, distinct from the father's, the statute will not prevent his acquiring a settlement by serving a year under that hiring. But here the son was not separated from the father when the latter was hired; he had gained no settlement for himself; he had entered into a contract, which when completed would give him a settlement; but at the time when the father entered into the relation of a servant at *New Forest*, the son formed a part of his family. (See this case, *ante*, p. 302.)

A deserter can gain no settlement by hiring and service, whilst he is such.

Rex v. *Norton*, *H.* 48 *Geo.* 3. 9 *East*, 206. *Bott*, *Cont.* 133. 1 *Nol. P. L.* 340. A person who was a deserter hired himself for a year, and served the year under that hiring. And it was held by the Court of K. B. that as it had been decided in the case of apprentices, that they could not contract any relation with a second master without the consent of the first, by which they could gain a settlement under such second master: so in principle it could not make any difference, whether he were originally bound by any contract of apprenticeship, or by any other contract equally obligatory upon him, which disabled him from binding himself to serve a second master. That the king's officers might have at any time reclaimed him: he could not therefore be said to have been lawfully hired. And that such an one was not *sui juris* to contract in such manner.

A private soldier, with the consent of his officer, entered into a contract of hiring and service, conditionally for a year, if so long allowed to be absent, and served the year. Held not to gain a settlement, as not being *sui juris*.

Rex v. *Beaulieu*, *M.* 55 *Geo.* 3. 3 *M.* & *S.* 229. 1 *Nol. P. L.* 340. Removal from *Milton* to *Beaulieu;* the sessions confirmed the order subject, &c. The pauper is the wife of *Hans Peters*, and her maiden settlement is in the parish of *Beaulieu*. *Hans Peters* is a *Swede*. Some years ago he entered into the *British* service, as a soldier in the third battalion of the sixtieth regiment of foot, and in 1806 was invalided, and sent to the depôt at *Lymington*. During the period of his being at that depôt, it was suggested to government by the commanding officer there, that it would be an economical plan to give the invalids leave of absence, upon their agreeing to relinquish their pay during such absence. The suggestion was approved by government and ordered to be carried into execution. In the beginning of the year 1808 *Hans Peters* hired himself as a monthly servant to Mrs. *Bowles*, of *Lymington*, and afterwards, on the 20th of *July* in that year, being then unmarried, hired himself to Mrs. *Bowles* for a year, and served such year in the parish of *Lymington*. Previously to this second hiring Mrs. *Bowles* applied to the commanding officer at the depôt, to know if *Peters* might hire himself for that period, and was told that he might. During the whole of his service for a year with Mrs. *Bowles* he received no pay, nor was he called upon to perform, nor did he perform any military duty; but he used to go to the depôt in *Lymington*, from time to time, to get his furlough

renewed, which never took him more than half an hour. The commanding officer, on his evidence, said, that he could send for him at any time, if the exigencies of the state required it. The books of the depôt were produced, from which it appeared that *Peters* was invalided in *September*, 1806, that on the 25th of *September*, 1808, a furlough was granted to him till the 25th of *December*; that on the 23d of *December* it was prolonged till the 23d of *June*, 1809; that on that day it was prolonged till the 23d of *October*, from thence to the 23d of *December*, and from thence to the 23d of *April*, 1810; that he returned again to the depôt on the 12th of *February*, 1810, and was discharged on the 5th of *November*, 1810. After argument Ld. *Ellenborough* C. J. said, To confer a right to a settlement by hiring and service for a year, as there are no words in the statute which qualify the general sense of the word hiring, I must take it to mean an absolute, unqualified, indefeasible hiring, that is, a hiring by which the party, who hires himself, has the power of communicating to the master an absolute right to his service for the whole time. In order, therefore, to do this, the party must be *sui juris*, and have the faculty of disposing of his own service. I think this case falls strictly within the analogy of the case of the apprentice, who in respect of his obligation to serve one master, is disabled from entering into a contract to serve another. However, the cases of the militia-men have been pressed upon our attention. I would wish to speak of those cases, as of the decisions of persons who have gone before us so highly venerable, with all the respect that is due to them, and I would therefore avoid trenching upon them as little as possible. But when I find them speaking of leaning in favour of settlements, and when I recollect that a pauper must be provided for somewhere, either as a settled inhabitant, or as casual poor, and when I find too that one of those decisions goes the length of holding, that eleven months may mean a year, I really am unable, with all the respect I bear to those persons who decided them, to go along with them so far. Perhaps, therefore, it may be the best thing to say of the militia-men's cases, that they are to be considered as exceptions. Here it appears there has been a hiring for a year, but not a lawful hiring in the sense of an effectual hiring. An effectual hiring is, where the servant is enabled to give the master a *quid pro quo*. Had this person the power of so doing? He had not. There was a halt, and pause to be made four times during the year, until he should renew his furlough. If the question were raised upon special verdict, whether this was an effectual hiring, understanding by that that the party must have a capacity of conferring what he stipulates for, could it be argued upon a statement of these circumstances, that the pauper's husband really passed to the master an interest in the whole of his service? His service in reality belonged to the crown, and he could only contract for so much of it as was remitted out of the right of the crown. It appears to me, therefore, that here has been no lawful hiring for a year, inasmuch as the servant had not the faculty of communicating the service he contracted for. It is said, here was no fraud, and that is true; but there is the vice of the argument, for this is not a question between the master who hires, and the man who is hired, but whether a condition, which the legislature has imposed on

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Rule as to hiring.

What an effectual hiring.

R. v. Beaulieu. this branch of settlements, has been complied with. The question is, whether this be such a hiring as the legislature intended. It seems to me that it is not, and that the reasoning in the case of the apprentice applies with full force to the present case. Therefore there not being such a hiring as the statute requires, the pauper's husband has not gained a settlement. *Le Blanc* J. agreed. — *Bayley* J. I am so unfortunate as to entertain a different opinion; and to think that this hiring was sufficient to confer a settlement at *Lymington*. It seems to me that here the party was *sui juris* to enter into the contract; that this was a contract which was only defeasible, and would confer a right of action to the master, if the servant absented himself on any other grounds except that of his being called upon by the act of government. For these reasons, and as I do not find any thing in the statute but the word lawful, to limit the nature of the hiring, and inasmuch as there has been a defeasible hiring for a year, which has not been defeated, and the party who was hired committed no fraud, but communicated the circumstances to the person who hired him, it strikes me, that this was a sufficient hiring to confer a settlement. (*Dampier* J. was absent.) Orders confirmed.

(As to soldiers taking a tenement, see *Rex* v. *Brighton*, *post*, § X.)

2. Of the Contract of Hiring.

(*a*) *As to the parties.*
(*b*) *As to terms.*
(*c*) *Where a contract will be inferred.*
(*d*) *What a hiring for a year.*
(*e*) *Hiring for a year under particular conditions as to the service.*
(*f*) *Limited or colourable hirings for the purpose of avoiding a settlement.*
(*g*) *Exceptive hirings.*
(*h*) *Of weekly and monthly wages, and notice.*

(*a*) As to the Parties.

Relationship.

As to the parties, it seems clear that no nearness of relationship will prevent the gaining a settlement by hiring and service

A daughter who is emancipated may be hired as a yearly servant by her father.

Chesham v. *Missenden*, *T.* 13 *An.* *Fol.* 142. 2 *Bott*, 178. 1 *Nol. P.L.* 341. *Sarah Barnes*, having a settlement of her own, lived with her father, who was a poor man and had no settlement, for a year as a hired servant, in a little cottage upon the waste, for 10*s.* a year, besides what she could get by her service and labour. And the whole Court held she gained a settlement thereby; that there was no ground of fraud; for it was to live with him, who might be grown old.

Rex v. *Chertsey*, *T.* 27 *Geo.* 3. 2 *T.R.* 37. 1 *Nol. P.L.* 342. The hiring and service was also held to gain a settlement, although it took place between a father and daughter. (*a*) (See *post*, this title.)

(*a*) N. B. In this case the daughter had previously gained a settlement by hiring and service, and consequently was emancipated when hired to her father.

Neither, according to the former of these cases, is it necessary that the person hiring the servant should have a settlement in the parish, although that circumstance may, when connected with others, be a reason for suspecting fraud. The master need not have a settlement of his own.

One person may also, by the authority of another, contract for that other. One contracting for another.

And a settlement may be gained by a hiring to and serving two joint tenants. Serving joint tenants.

And the master need not live in the parish where the servant serves. *Rex* v. *Eldersley*, 2 *Bott*, 274. 1 *Nol. P. L.* 341. Master's residence.

And an infant may hire himself, as in *Rex* v. *Wincaunton*, 2 *Bott*, 195. 1 *Nol. P. L.* 341. Age.

Rex v. *Rickinghall Inferior*, *E.* 46 *Geo.* 3. 7 *East*, 373. 1 *Nol. P. L.* 341. 350. In this case the pauper was a *Greenwich* pensioner, and came disabled to the parish of *Redgrave*, where he was settled. The parish officers agreed with a person of *Rickinghall Inferior*, that the pauper should live with him and do whatever he should set him about, and they agreed to pay 2*s.* 6*d.* a-week with him. And the court said that the parish officers had no right to hire out the pauper to the other parish. And consequently no settlement could be gained by service under such a hiring, (see the remainder of this case, *post*, p. 346.) Parish pauper, hired out by parish officers, cannot by such hiring and service under it gain a settlement.

In *Rex* v. *Stowmarket*, *H.* 48 *Geo.* 3. 9 *East*, 211. *Bott*, *Cont.* 135. 1 *Nol. P. L.* 304. 312. It appeared that the pauper was a poor boy of the age of fourteen, in the house of industry for the poor of the incorporated hundred of *Stowmarket*; that the guardians of this house were empowered by their incorporating act to apprentice poor children for seven years: that it did not appear that they had ever exercised this power, but instead of binding out the children they were sent to their respective parishes: the pauper was sent to one *R.* of *Stowmarket*, to whom he had been allotted by the officers of that parish: this person told the pauper he had procured him a service with one *Fox* of *Coddenham*. The pauper did not object, conceiving he had no discretion on the subject. On the day after *Michaelmas* he went to *F.* who received him, and told him he would give him clothes, and that he was to stay with him a year. The pauper did stay the year, receiving clothes, maintenance, and a little pocket-money. — And *per* Ld. *Ellenborough* C. J. who reprobated this practice of allotting children out, instead of providing for them in the manner pointed out by the act. The adoption of a contract must be the act of a free agent; and it appears from the circumstances of the pauper's making no objection or agreement, conceiving that he had no discretion on the subject, and that he was obliged to accept the service as being under the controul of others, that he cannot be considered as having *adopted* the act of his master. — No settlement was gained by this service. Compulsory hiring, and service under it, gains no settlement.

Rex v. *Inhabit.* of *Dunton*, *E.* 52 *Geo.* 3. 15 *East*, 352. *Bott*, *Cont.* 140. 1 *Nol. P. L.* 351. Removal of *Benjamin Collins* from *Ingrave* to *Dunton*, both in the county of *Essex*, which order was confirmed on appeal, subject to the opinion of the Court on the following case: *Benjamin Collins* before he lived with *Smith* as after-mentioned, belonged to *Dunton*. Previously to *Michaelmas*, 1809, he went to one *Eastwood* in the parish of *East Horndon*, and worked for him for some time at 6*d.* a-day. Poor boy of sixteen *hires himself*; the overseers of his parish afterwards assist him with clothes: Held that he acted

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suo jure, gained a settlement.

Afterwards he was taken into *Eastwood*'s house, where he lived two years in his employment. On leaving *Eastwood*'s service (by which it is admitted that no settlement was gained, as the pauper was sent into it by the overseer of *Dunton* without any act of his own,) and in his way to *Dunton*, he was met in a field by a labourer, who said to him, "Do you want a service? you would suit *Smith*:" *Smith* being in the field at the time, the pauper immediately applied to him, when *Smith* said to him, "Are you willing to go with me, and bind hay or thatch, or do whatever else you are bidden?" the pauper said he was willing, and *Smith* took him home to his house in the parish of *Ingrave*. This happened a little before *Michaelmas*, 1809, and the pauper was then about sixteen years of age: nothing was said about wages, and neither then nor at any other time was any other agreement made between the pauper and *Smith*. A day or two afterwards, *Smith* said, "I see you are in a bad state about clothes, if you cannot get clothes, I cannot keep you." The pauper replied "Mr. *Maunder*, the overseer of *Dunton*, will find me clothes." On the next day the pauper and *Smith* went to *Maunder*, when *Maunder* undertook to provide clothes, and asked *Smith*, "What he would give him a-week?" *Smith* engaged to pay one shilling a-week to *Maunder for the parish on account of clothes found.* The overseer then gave an order for the clothes that the pauper wanted; *Maunder* in the presence of *Smith* asked the pauper if he went willingly into *Smith*'s service; the pauper replied that he did. *Smith* during the service occasionally gave the pauper small sums. About four months after the pauper had been in the service of *Smith*, the latter, unaccompanied by the pauper, and without his knowledge, went to the overseer, and told him that he could not keep the pauper any longer, if he was to pay the one shilling a-week. The overseer released *Smith* from the payment, and the pauper staid the year out in *Smith*'s service. At *Michaelmas*, 1810, *Smith* said to *Maunder* that he would have the pauper no longer without fresh clothes, to which *Maunder* said, that he must wait till the town meeting, which would take place in a fortnight. The overseer then asked the pauper if he was willing to live with *Smith* another year, he said that he was willing, as he used him very well. The overseer asked *Smith* to make the pauper some allowance, *Smith* promised to give him a pair of shoes, and to do the best he could for him. The pauper served the second year with *Smith*, who gave him a pair of shoes, and laid out 1*l.* 8*s.* 6*d.* in the purchase of clothes for him. The sessions were of opinion that a settlement was not gained in the parish in *Ingrave*. — In support of the orders it was argued that the contract, if any, was between *Smith* and *Maunder* the overseer of *Dunton*, which was the pauper's original place of settlement; and that in *Rex* v. *Rickinghall Inferior*, a pauper placed by the parish officers with a parishioner for whom he was to work, upon certain terms agreed upon between the officers and the parishioner, was not considered as a contracted servant. They also referred to *Rex* v. *Stowmarket*. — *Grose* J. The question is, whether the contract was made by the master with the boy, or with the overseer? Now the boy offered and declared himself willing to serve the master, and the master agreed to take the boy before any intervention of the parish officer, and though facts are afterwards

stated, to shew that reference was made to the officer, yet that was only to enable the boy to make the contract, by getting clothes from the overseer, without which the master refused to keep him. — *Le Blanc* J. Here there was an original agreement for a hiring and service between the boy and his master, before the overseer knew any thing of the matter, how then can it be said to be a contract made between the master and the overseer for the letting out of the boy, without the real assent of the latter? The law indeed says, that an overseer cannot contract with another for the services of a pauper without his consent; but there is no law which says, that an overseer may not furnish a pauper with clothes, to enable him to make a contract of hiring with another. When *Smith* objected to keeping the boy for want of clothes, the latter said he would apply to the overseer, who was to him *in loco parentis*, and it is true that when the master met the overseer, it was agreed between them, that the master should pay the other 1*s*. a week for the parish, to reimburse them the expence of the clothes, but the overseer himself, in *Smith*'s presence, asked the boy if he were willing to go into *Smith*'s service, and the boy answered that he was willing. — *Bayley* J. The boy acted throughout *suo jure*, he chose his own master, and fixed his own terms, and therefore I see no objection to his gaining a settlement under the contract of hiring made by him. Order quashed.

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(*b*) Of the Contract; as to its Terms.

Shall be lawfully hired into any parish or town for one year] Upon the construction of these words arises the question, What shall be such a *hiring for a year* by which, and service under it, a settlement may be gained?

In *Gregory Stoke* v. *Pitminster*, *M.* 13 *G.* 2 *Bott*, 183. 1 *Nol. P.L.* 343. 348. The pauper was sent to by a relation, who told her that if she would live with her she should have her meat, drink, washing, and lodging. The pauper went and lived with her four years as a servant. It was insisted that the living four years amounted to a good *retainer* for a year, and that the actual entry into the service, after being sent to and terms offered, was such an assent as amounted to a *contract*. But the Court held that *there must be an actual contract*, where the servant is under no obligation to stay, *and* the contract must be *mutual* to bind the parties, and that this was no agreement, but an encouragement to the pauper that if she would live with the relation she would maintain her. See this case observed upon, *post*, 347. in *Rex* v. *Lyth*, by Ld. *Kenyon*.

There must be a contract.

Rex v. *St. Mary Guildford*, *E.* 25 *Geo.* 3. 2 *Bott*, 187. *Cald.* 521. 1 *Nol. P. L.* 349. *Thomas Full* having a derivative settlement in *St. Martin's-in-the-Fields*, went, at the age of eleven or twelve, to live with his uncle, who was a tailor, in the parish of *South Mims*, and worked for him, and learned his business. At the expiration of two years, his uncle proposed that he should become his apprentice, but they had some difference about it, and the pauper refused to be bound. However he continued to live with him, working in, and learning his business till about the age of seventeen, and was provided with board, lodging and necessaries. — The sessions thinking this a settlement in *South Mims*, quashed the order of

A boy living several years with his uncle, and working at his trade for his board, lodging, and clothes, but without any *contract* does not gain a settlement.

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two justices removing the pauper and his wife from *St. Mary Guildford* to *St. Martin's-in-the-Fields*. — This case came on immediately after *Rex* v. *Thames Ditton*, 2 *Bott*, 186., and Mr. *Sylvester*, who was to have shewn cause, said, as the Court had declared in that case that a hiring was necessary, it was impossible for him to support this order of sessions. — The Court said a hiring was certainly necessary, and, that this was clearly no settlement in *South Mims*. — Order quashed.

Where it appears that there was no contract, no hiring will be presumed; and no settlement can be gained: but where a contract appears, it will be presumed to have been regular, till the contrary appears.

Rex v. *Weyhill*, *H.* 33 *Geo.* 2. *Burr. S. C.* 491. 2 *Bott*, 185. 1 *Nol. P. L.* 345, 346. It appeared on the evidence of the pauper (the only witness produced on either side), that *Robert Pyke*, Esq. took the pauper (being then about eight years of age) into his family, *from charity*, and gave him meat, drink, lodging, and clothes while he continued with him, which was about six years, of which the four last years were in the parish of *Weyhill*. That *neither at nor before* the time of the said Mr. *Pyke's taking the pauper* into his family, nor at any time after, *was there any contract* between the said parties, in relation to the pauper's service of the said Mr. *Pyke*, or his continuance with him, or to any wages or other gratuity to be paid to him for the same: that during his continuance with the said *P.* he was employed in running of errands, and doing whatsoever the said *P.* or his servants thought fit to bid him: that no wages were ever paid or given to him: and that in the pauper's apprehension he was, during all the time aforesaid, at liberty to quit the said *P.* or the said *P.* to turn him off, as either party should think fit. The sessions were of opinion that at such distance of time, a hiring for a year between the said *P.* and the pauper or his father ought to be presumed, and therefore they confirmed the order of removal to *Weyhill*. — But *by the Court:* It is clear here was no hiring at all; no contract; but he was taken *out of charity*, a child eight years of age, to run on errands and do whatever he was bid, and left Mr. *Pyke* when he came of fourteen years of age, and was capable of doing more service. And it is expressly stated that there was no contract. Indeed *where there is a hiring stated, the Court will presume it to have been a regular one, unless the contrary appears;* and that was the case of *Rex* v. *Wincaunton* (*post* 352.); a general hiring was there stated; but here was no hiring at all. Both orders quashed.

Rex v. *Rickinghall Inferior*, *E.* 46 *Geo.* 3. 7 *East*, 373. 1 *Nol. P. L.* 350. This case was stated, *ante*, p. 343. for the purpose of shewing that a parish cannot hire out a pauper into another parish, so that he may acquire a settlement by service under that hiring. — Besides the facts there stated, it further appeared by the case that the pauper, after the parish officers of *Redgrave* had refused to continue the allowance, promised by them to the person with whom he was placed, was by that person sent home to *Redgrave*. He then returned and lived with the same person without any new agreement; he frequently absented himself, sometimes with, sometimes without leave; he sometimes received 6*d.* for jobs done on *Sundays*, but on applying for relief to *Redgrave*, they gave it him. And the Court said here was no settlement gained, for after the parish withdrew their allowance, the pauper was permitted to live at *Rickinghall* out of charity, without any contract as between master and servant.

(c) Where a Contract will be inferred.

The foregoing cases were decided upon the ground, that it was proved as a fact that there was no contract, and therefore there could arise no presumption that one had existed. But there are also cases in which the existence of a contract is not negatived by the evidence, but at the same time is not proved. In such cases the Court will infer, under certain circumstances, that there was a contract, and the nature of it will also be inferred from the general character of the evidence.

The ostler's case.

If a person have lived with another as ostler for two years, and have been seen in menial service there, a yearly hiring will be presumed.

Rex v. *Holy Trinity*, in *Wareham*, *H.* 22 *Geo.* 3. *Cald.* 141. 2 *Bott*, 352. 1 *Nol. P. L.* 345. The sessions confirmed an order of removal from *St. James's* in *Poole* to *Holy Trinity* in *Wareham*, and stated that it was proved that the pauper's husband was born in the parish of *Beer Regis*, and that it was also proved by the pauper, that her husband was *abroad beyond sea*, and had been so for two years past, if alive. That to her knowledge he lived in the capacity of an ostler with Mrs. *Lee*, in *Holy Trinity* in *W.*, some years since deceased, for about two years, where she had seen him brew, but whether there was any thing relating to such service, was not proved; but that she had heard her husband say, he was settled in the parish of the *Holy Trinity* in *Wareham*. — By Ld. *Mansfield* C. J. The sessions have drawn their conclusion, that he was hired: and I think they have done right. — *Buller* J. Though the evidence is slight, there is nothing to contradict it. *Willes* and *Ashhurst* Js. concurred. Both orders affirmed.

Husbandman's case.

If it be proved that a person was seen and known to be in the service of another as servant in husbandry for a year, a yearly hiring will be presumed.

Rex v. *Lyth*, *T.* 33 *Geo.* 3. 5 *T. R.* 327. 2 *Bott*, 355. 1 *Nol. P. L.* 345. 348. 362. Two justices removed *T. Carling* from *Whitby* to *Lyth*. The sessions confirmed the order, and stated the following case:—On behalf of the respondents it was proved that the pauper was the legitimate son of *W.* and *M. Carling*, and was born in *Lyth*. On behalf of the appellants, in order to shew a derivative settlement in the pauper from his father in a third parish, it was proved that *W. Carling*, before his marriage, was, a few days after *Martinmas*, 1731, seen and known to be in the service of one *Campion* in *Barnby*, as a servant in husbandry, and was from time to time seen and known to act in that capacity with *Campion* at *Barnby*, for some time upwards of a year. Evidence was then offered on behalf of the appellants, to prove that *Campion*, who was then long since dead, had declared in his lifetime that *W. Carling* had been hired with him for a year: but the sessions were of opinion that such evidence was not admissible. It was then also proposed to give evidence of declarations to the same effect by *W. Carling*, who is also dead, touching such hiring; but the sessions also refused to admit such evidence. Whereupon the sessions, being of opinion that there was no evidence of a hiring for a year, confirmed the order, subject to the opinion of the court of K. B. upon the propriety of rejecting the evidence above offered of the declarations of *Campion* and *W. Carling*; and also whether, after rejecting such declarations, they had done right in refusing to infer the hiring from the fact of service proved as above stated. — When this case was called, Ld. *Kenyon* C. J. addressing himself to the counsel who were to argue it, said, the

Implied contracts.

R. v. Lyth.

case was drawn up in too loose a manner for the court to give any solemn judgment upon it; for in some parts of it, evidence was stated instead of facts: and the Court were left to draw inferences which the magistrates below ought to have done. But that, if the sessions wished to know whether, from the evidence stated relative to the hiring of *W. Carling*, they were at liberty to draw the conclusion of his having been hired for a year in fact, the Court had no hesitation in thinking that they might legally draw such an inference. He therefore thought this advice of the Court might be given to the magistrates without the necessity of entering any regular judgment upon this case as it now stood, or putting the parties to the expense of stating the case again. — *Wood*, in support of the order, cited case of *Rex* v. *Pitminster*, *ante*, p. 345. — But Ld. *Kenyon* C. J. said, in *Rex* v. *Pitminster*, it appeared that the pauper was taken out of charity; and therefore the presumption of an hiring was taken away. But this is the case of a servant in husbandry, whose service for a year affords very strong presumptive evidence of an hiring for a year. But however strong that presumption be, as only the evidence of the hiring is stated, and not the fact itself, we cannot decide upon the case: though the sessions must be directed to draw from this evidence the conclusion, that *W. Carling* was hired for a year. — Case sent back to the sessions.

Also if a person remain in service after the expiration of the first year, a yearly hiring may be presumed, commencing with the second year.

Rex v. *Hales*, *T.* 34 *Geo.* 3. 5 *T. R.* 668. 2 *Bott*, 357. 1 *Nol. P. L.* 345. 364. Two justices removed *Martha Mitchell* from *Hales* in *Norfolk* to *Wrentham* in *Suffolk*. The sessions quashed the order, and stated the following case: — The pauper being settled in *Wrentham*, a fortnight after old *Michaelmas*, 1792, heard from Miss *L. Garnham* of *Beecles*, that her father, Mr. *Garnham* of *Hales*, wanted a servant; and the pauper agreed with her to go to him a month on liking; she went accordingly; and in the spring following Miss *Garnham* told the pauper, that if she behaved well, and did her work properly, she should have 4*l.* for a year. The pauper continued in Mr. *Garnham's* service without any other agreement until the *Christmas* following, when she went away; but a fortnight after *Michaelmas*, 1793, she received 4*l.* for a year's wages then due; and for the remainder of the service from that time she received 18*d.* a-week, being the proportion of wages then due at the rate of 4*l.* *per ann.* — Ld. *Kenyon* C. J. At present the case is so imperfectly stated, that we cannot give any judgment upon it. A retrospective hiring certainly is not sufficient to confer a settlement; but as the pauper continued in the same service after the expiration of the first year, there was abundant ground for the justices to have presumed a hiring for a year from that time. However, as the fact is not stated one way or the other, the case must be sent back, where most probably the justices, after hearing the intimation of this court, will find the fact of a hiring for a year, which will put an end to the case. Case sent back to the sessions.

Retrospective hiring.

Female natural child hired by the wife of its reputed father.

Rex v. *Sow*, *M.* 58 *Geo.* 3. 1 *B. & A.* 178. Removal from the hamlet of *Coundon* to the parish of *Sow* in the county of *Warwick*. The sessions confirmed the order subject to the opinion of the Court of K. B. on the following case: The pauper being settled at *Kearsley*, was hired in *November*, 1812, by the wife of Mr. *Deeming* of *Sow*, for a year, at 50*s.* wages, and what clothes Mrs. *Deeming*

R. v. Sow.

pleased. Previously to this hiring, the pauper, who is a natural daughter of Mr. *Deeming*, lived with her mother at *Kearsley*, and the hiring was for the purpose of gaining a settlement in *Sow*. As soon as she was hired, she went into the service of Mr. *Deeming*, served him for a year, and continued to live with him until the month of *July*, 1816, when she went away; during the whole of which time she did the household work, as she did during the first year, but no conversation took place between the parties about hiring after she was so hired as aforesaid in *November*, 1812, and there was no second hiring, unless from continuance in the service of Mr. *Deeming*, a hiring ought to be implied, which in the opinion of the sessions under the circumstances stated, it ought not. Some months after the expiration of the first twelve months, Mr. *Deeming* gave the pauper 5*l*., 50*s*. thereof for the first year's wages, and desired her to keep the remaining 50*s*. and say nothing about it. The pauper never afterwards received any sum on account of wages, but received at different times clothes and pocket-money. Mr. *Deeming*, at *Lady-day*, 1816, removed with his family to the hamlet of *Coundon*: the pauper removed with them, and continued to live with them there till the month of *July*. The Court of quarter sessions further found that there was no fraud in this case. After argument, *Bayley* J. said, I think the sessions have done perfectly right; where the parties are not related, it may fairly be presumed from a continuance in the service, that the terms in which they continue are the same as during the preceding year. But where the relation of father and child subsist, the ground for that presumption fails, and here there are a variety of circumstances to shew that there was not any new hiring. The parties lived during the second year upon different terms from what they lived during the first. Order confirmed.

A hiring for a year may be presumed from a service for four years.

Rex v. *Inhabitants of Pendleton*, *E*. 52 *Geo*. 3. 15 *East*, 449. *Bott*, *Cont*. 38. 1 *Nol*. *P*. *L*. 346. *John Longden* was removed with his wife and children by an order of two justices from the township of *Salford* to that of *Pendleton* in the county of *Lancaster*, which order was confirmed by the sessions on appeal, subject to the opinion of the Court of K. B. on the following Case: — *John Longden* was, in the year 1782, engaged as a servant to Messrs. *Douglas* & *Co*. of *Pendleton*, by the following instrument, sealed and delivered, but unstamped: "Articles of agreement made this 24th of *June*, 1782, between *Thomas* and *William Douglas* of *Pendleton* in the county of *Lancaster*, on the one part, and *J. Jebson* cotton-worker, near *Pendleton*, on the other part, and *J. Longden*, of the other part, witnesseth that the said *J. Jebson* hereby covenants and agrees duly and faithfully, and *J. Longden* hereby covenants and agrees duly and faithfully to serve the said *T*. and *W. Douglas* in the capacity of cotton-workers, during the term of three years, night or day, and the said *T*. and *W. Douglas* consent and agree to pay unto the said *J. Jebson* 5*s*. 6*d*. *per* week, for the first year, and to *John Longden* 6*s*. *per* week for the first year; 7*s*. *per* week for the second year; 9*s*. *per* week for the third year; in consideration of his due and faithful services; and whatever time the said *J. Jebson* or *J. Longden* shall be absent from their work, it shall be proportionably deducted from the amount of his wages. The present agree-

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ment to remain in full force for the said term of three years. (Then followed certain covenants, not material to the question.) And for the due performance of this agreement and every article thereof, the said *J. J.* and *J. L.* bind themselves and their executors in the penalty of 100*l.*" (Signed and sealed by the respective parties.) The pauper served Messrs. *Douglas & Co.* during the time stated in the above-mentioned instrument, and after the expiration of that time he continued on in their service for four years, without any thing further being said as to wages, and without any express engagement as to the time or conditions of such service. On the part of the appellants, it was contended that there was no hiring for a year under which a settlement could be gained; but the Court being of opinion that a hiring might be *presumed,* confirmed the order. — Ld. *Ellenborough* C. J. The fact of the service is always capable of distinct proof, for it is collateral, and subsequent to the contract itself. The pauper served, that is a fact to be proved by parol evidence; he served *T.* and *W. Douglas* at *Pendleton,* that also is proved by the fact; he served them there during three years, which is a shorter way of expressing that which the sessions meant to find as to the time of the service, by referring to the time mentioned in the instrument; and he afterwards continued to serve them for four years longer; he served without any thing being said as to wages. The stress of the argument seems rather to shew, that there were no certain wages reserved, than that there was no hiring for a year, for if there were only a general hiring, the law presumes that it is for a year, and if the rate of wages were not specified, he would be entitled to reasonable wages. Then were not the sessions warranted from the fact of a service for four years at wages, though not specified, to presume that it was under a hiring for a year? the law says, that they may make such a presumption when there is nothing to repel it, and that makes an end of the case. — *Grose* J. The question meant to be put to us by the sessions is, whether they did right in presuming a hiring for a year, from a service for four years, at the rate of so much a-week as was paid? We cannot say that they could not make such a presumption from the evidence.— *Le Blanc* J. The argument has turned principally on the way in which the counsel would have put his case at the sessions; for any thing which appears to us the sessions received the evidence of the written instrument without objection made to it at the time; for if they meant to state the question reserved by them to be whether that evidence was properly received, they would have stated that that objection was taken to it, and asked the advice of the Court on its admissibility. But as far as we can see, the evidence was received without objection, and the facts stated in the instrument are joined on with the other evidence, which, without reference to the instrument, would probably have been stated more fully, and the pauper would then probably have proved that he had served, in fact, for four years after the expiration of the articles, having before served for three years under them, and received wages at the rate of so much a week during that time; and then the sessions would have sent to us to know whether they could, from that evidence, putting the written instrument quite out of the question, have presumed a hiring for a year. And how can we say that they could not so presume? — *Bayley* J. If there

were premises from whence the conclusion of a hiring for a year could properly be drawn, the justices in sessions were the proper persons to make that presumption. Now, here there was a service for four years, and wages paid during that period, from whence they might draw the conclusion. But it has been argued here, that inasmuch as the pauper served for some part of the time, at least, under a written instrument unstamped, we cannot look at the instrument even to see for what time it enured, and that no parol evidence could be given of any contract with reference to the subject matter of it. But though we cannot look at the unstamped instrument for the purpose of proving by it any agreement between the parties, for such is the general import of the stamp acts, yet the Court may look at it to see whether it applies to other evidence of a contract between them; as if a contract in writing be made, not stamped, for the sale and delivery of certain goods, on certain terms, the Court, in an action for the non-delivery of goods upon a contract proved by parol evidence only, may look at the instrument to see whether it applies to the goods then sought to be recovered for; and if those goods were not included in the contract, parol evidence may be received of the contract sought to be recovered upon. So here, the Court might look at the instrument to see the duration of the first contract under it, in order to guide them in receiving parol evidence of the subsequent service to which it did not apply. — Orders confirmed. R. v. Pendleton.

Rex v. *Houghton-le-Spring*, *H.* 59 *Geo.* 3. 2 *B.* & *A.* 375. Where the hiring was by an indenture made with an agent of the master, but executed only by the servant, and service for a year under it, the Court of K. B. held, that if it had been found as a fact that the master was cognizant of the contents of the deed, his receiving the servant in pursuance of it would, in point of law, have been a receiving him on the terms therein contained, and would be sufficient to confer a settlement. Case was sent back to the sessions to find that fact. Hiring by indenture not executed by the master.

A party who takes the benefit of a deed is bound by it, although he has not executed it. *Co. Lit.* 230. *b. n.* 1.

Rex v. *Long Whatton*, *M.* 34 *Geo.* 3. 5 *T. R.* 447. 2 *Bott*, 356. 1 *Nol. P. L.* 345. 364. The pauper (stated in the case to be a lunatic at the time of removal made) went in *March* to live at *Diseworth* with Mrs. *Lowdham*, to wait upon Mr. *Lowdham*, who was poorly. She continued there till the death of Mrs. *L.*, which happened two or three years after. She was seen during that time constantly acting as the servant of Mrs. *L.* It appeared further by the case stated, that on the day of her first going to *Diseworth* the pauper had told one person that she was hired till the *Michaelmas.*— And that these declarations were objected to by the respondents; but that the sessions received them, and were of opinion, upon the whole evidence, as well those declarations as the rest, that she gained a settlement at *D.* — And *per* Ld. *Kenyon* C. J. Independently of the declarations of the pauper, there was sufficient evidence to warrant the justices in finding a hiring for a year at *D.* Though the pauper were at first only hired till the *Michaelmas* following, yet she continued in the same service for three years. If a person be only hired for less than a year, and serve for three years, a contract for a year may be inferred.

Note. — It did not appear by any evidence, otherwise than by evidence of the pauper's declarations (she being at the time of re-

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moval a lunatic), that she had been hired from *March* till *Michaelmas:* and Ld. *Kenyon* must be understood to have spoken hypothetically, *viz., that though the fact were true,* that the pauper was at first, &c.

The Court of K. B. will not, upon a case stated, presume a hiring for a year; for that is a fact to be found by the sessions. *Rex* v. *Seacroft, E.* 54 *Geo.* 3. 2 *M. & S.* 472.

(*d*) What is a Hiring for a Year.

It is next to be considered what contracts will amount to a hiring for a year: which may depend, 1st. Upon the stipulation as to time; 2d. Upon the stipulation as to wages.

The yearly hiring to be by one entire contract.

Dunsford v. *Ridgwick, M.* 9 *Ann.* 2 *Salk.* 535. 2 *Bott,* 250. 1 *Nol. P. L.* 356. A person was hired for half a year, and after that was hired again for another half year, with the same person, and thereupon served a year in one continued entire service, but by several hirings. — By the Court: It ought to be one entire contract and one entire service; the one is required by the statute as well as the other. If a service under several contracts shall gain a settlement, one that serves by the month, by the week, or by the day, if he continue a year, shall gain a settlement. One may hire by the day for charity; but there is danger of being chargeable in hiring such a person by the year. For such a term as a year it is not supposed a master would hire one, unless able of body, and so a person not likely to become chargeable.

So, *Horsham* v. *Shipley, M.* 12 *Ann. Fol.* 134. 2 *Bott,* 235. 1 *Nol. P. L.* 356. A person was hired from *May-day* to *Lady-day,* then from *Lady-day* to *May-day:* and the Court were of opinion it did not gain a settlement, for they said the hiring must be for a year.

Though the local custom be otherwise.

Rex v. *Lowther, H.* 11 *Geo.* 3. *Burr. S. C.* 674. 2 *Bott,* 238. 1 *Nol. P. L.* 356. The sessions stated the following case: The pauper was hired to *William Thompson,* in the parish of *Lowther,* from *Whitsuntide* to *Martinmas;* and again was hired to the said *Thompson,* for the succeeding half-year, from *Martinmas to Whitsuntide* following; and in pursuance of those hirings served the said *William Thompson* at *Hackthorpe* for the complete year, without leaving her service; and received two half-year's wages. It further stated, that the usual custom of hiring servants in *Cumberland* is from half-year to half-year. And it was agreed, without argument, that no settlement could be gained under such a hiring and service.

Hiring ascertained; time implied.

Where there is a general hiring and no time mentioned, it implies hiring for a year. Hiring to serve in husbandry.

Rex v. *Wincaunton, H.* 24 *Geo.* 2. *Burr. S. C.* 299. 2 *Bott,* 195. 1 *Nol. P. L.* 367. The pauper, a boy of seventeen, offered himself to serve *Samuel Williams* of *Charleton Horethorne;* who hired him to serve him in husbandry, and agreed to give him meat, drink, washing, lodging, and clothes, when wanted; but *no particular time was agreed on,* and the pauper apprehended his master might have been off, or he might have gone away from him, at their pleasure; nevertheless there was no agreement for that purpose. The boy continued and served him in *Charleton Horethorne* two years and a half. — By the Court: He gained a settlement there by this service. A general hiring is a hiring for a year. And here are no circumstances in this case

to shew an intention to the contrary, or to vary it from the general rule. The mere apprehension of the pauper doth not do it. [This case, observed upon in *Rex* v. *Weyhill*, *ante*, p. 346.] *Hiring ascertained; time implied.*

Rex v. *Berwick St. John*, *E.* 33 *Geo.* 2. *Burr. S. C.* 502. 2 *Bott*, 197. 1 *Nol. P. L.* 366. The pauper, settled at *Handley*, happened to meet Mr. *Jones*, head-keeper of *Rushmore Lodge* in the parish of *Berwick St. John*, who had then lately parted with one *Edward Hill*, who had been for many years one of his servants or under-keepers, at the wages of 3*l.* a-year and a keeper's livery, besides meat, drink, and lodging. The said Mr. *Jones* addressed the pauper thus: "Do you like the life of a keeper?" Which being answered in the affirmative, he said further: "Then go into *Ned Hill*'s place, and you shall want no encouragement." Accordingly he went, and continued in the service for three years, and received three years' wages. The question was, whether this conversation amounted to a hiring for a year, so as to gain a settlement? It was urged, that a hiring generally is a hiring for a year, and that the law knows no other servant but one for a year; and that this has an express reference to *Hill*'s service, which was for a year. On the contrary, it was argued, that here was no actual hiring at all; and none can arise, by implication, from the bare service alone: and that the reference to *Ned Hill*'s service relates to *Hill*'s work only, and not to his contract.—By Ld. *Mansfield* C. J. and the Court: This man served three years, and received wages accordingly. But it is objected, that he was never hired at all. It is admitted, that if he were hired at all, it would by law be a hiring for a year. And upon the state of this conversation, it is a clear hiring; for *Hill* was a hired servant. And therefore it was adjudged, that the pauper thereby gained a settlement.

Telling a person to go into another's place, that other having been a yearly servant, is ground to imply a hiring for a year.

Rex v. *Stockbridge*, *M.* 14 *Geo.* 3. *Burr. S. C.* 759. 2 *Bott*, 199. 1 *Nol. P. L.* 363. The pauper was hired to one *Michael Nicholas*, after this manner: the pauper asked *N.* if he wanted a boot catcher and driver; and *Nicholas* said, yes; the pauper replied he was willing to serve him; and *N.* bid him "go into the yard and look after the horses;" nothing else passed, and no term for which he was to serve mentioned. He went into the service, and continued in it for one year; and was, during that time, found by his master in meat, drink, and lodging there, but received no wages for such service. He was afterwards hired to *John Watts* of *Basingstoke*, "to be a chaise-driver," but no term was mentioned: He served him for a year there, being found by him in meat, drink, and lodging, but received no wages. He thought himself at liberty to leave either of these masters whenever he pleased. And several witnesses proved that the customary manner of engaging chaise-drivers is as the pauper deposed, and that the masters and drivers think themselves at liberty to part whenever they please. Lord *Mansfield* was absent. The other three judges were of opinion, that this was a sufficient hiring for a year. "A general indefinite hiring is a hiring for a year, unless something appears that may raise a presumption to the contrary." (*a*) And nothing is here stated which limits the hiring, or shews that it was meant to be for less than a year.

Where no mention is made of wages or of time, and the service is for a year, a hiring is presumed. Bidding one "*to go into the yard and look after the horses.*"

(*a*) If a man retain a servant generally, without expressing any time, the law shall construe it to be of one year, for that retainer is according to law. 1 *Inst.* 42*b*. 1 *Nol. P. L.* 362 n. (4.) See p. 352.

Hiring ascertained; time implied.

Where one hires himself to another, and there is no stipulation as to time, but only as to meat, &c. and he serves for three years, a hiring for a year will be implied.

Rex v. *Bath Easton*, *M.* 16 *Geo.* 3. *Burr. S. C.* 823. 2 *Bott*, 201. 1 *Nol. P. L.* 342. 363. The pauper was hired to *John Giles*, a barber in the parish of *St. John* in the town of *Devizes*, to serve him as a journeyman barber; who was to give him meat, drink, and lodging. In lieu of wages he was to have the *Christmas boxes*. No time was stipulated during which he should serve. Upon these terms he lived with him for four years; but thought himself at liberty to leave his master when he thought proper. Afterwards he was hired to *John Bedford* an inkeeper at *Mangotsfield*, "*to serve him in his stable;*" who was to find him meat, drink, washing, and lodging, but no wages, other than what he should receive as perquisites of the stable; and no time was stipulated during which he should serve: and he apprehended, that his master might have turned him off, or he might have gone away from him, at their pleasure. From the time that the pauper began to serve the said *John Bedford* to the time at which he left him, was sixteen years. During which time he left the said *John Bedford* several times at his pleasure. But from the time of his first going into the service, he was with the said *John Bedford* two years and upwards without leaving him at all; and at the end of the said term of sixteen years, he was with him for three years together without interruption. And this was admitted without argument to be a settlement at *Mangotsfield*.

Where the pauper agrees to go and live with one for a particular purpose, and is to receive clothes, &c. but no time is mentioned, and she remains two years and a half, going away in the middle of a year, a yearly hiring is presumed.

Hiring "to come and live and take care of a child."

Rex v. *Worfield*, *H.* 34 *Geo.* 3. 5 *T. R.* 506. 2 *Bott*, 208. 1 *Nol. P. L.* 342. 363, 364. *H. Phillips* went to live with *A. Smith* in *St. Leonard* in *Bridgenorth*, and served him near a year, but was not hired to him as she knows of. While she lived with the said *Andrew Smith*, *John Jones* of *St. Leonard* met with her, and taking her into his house, asked her if she were hired again to *Smith?* She answered, that she was not. *Jones* then asked her, "if she would come and live with him and take care of his child?" to which she consented, and soon after she went to him. A few days after she had been with *Jones*, he told her he would find her meat, drink, and clothes, and asked if she would be satisfied with that? She told him she should. He said he would have given her money, but that it was better for her to have clothes, as she was connected with bad friends, who would take her money. She went to *Jones* at *Christmas*, and lived with him about two years and a half, leaving him in *May*, when her mistress told her that her child was then old enough not to require any further attendance, and dismissed her. She said, in her own opinion she was at liberty to have left *Jones* at any time. — Lord *Kenyon* C. J. It has been so long settled that a general hiring is a hiring for a year, that it ought not now to be controverted. In my opinion the hiring in this case was a hiring for a year; the circumstance of the pauper's going away in the middle of a year, does not shew that this hiring was not of such a description; for it was competent to both parties to put an end to the contract whenever they pleased, and here they did dissolve it in the middle of a year. It is much to be wished that in cases of this kind the justices at the sessions would draw the conclusion, and state it as a fact, whether or not there was a hiring for a year. The other judges concurring, both orders were quashed.

Hiring for eleven months,

Rex v. *Macclesfield*, *H.* 29 *Geo.* 3. 3 *T. R.* 76. 2 *Bott*, 206. 1 *Nol. P. L.* 344. 364. The pauper, *George Dean*, being settled in

Wildboarclough, was hired by *Francis Berwick*, late *Macclesfield*, button-maker, for 11 months, at 10 guineas wages; at the end thereof he and his master settled his wages for 11 months, and his master gave him a half-guinea over, saying, that he had been a good servant, and added, "*You may as well stay on an end in your place;* the place suits you, and you suit the place." The pauper's answer was, "Very well, sir, I have no objection." And he continued to follow his master's business near three years. The pauper being at *Birmingham* with his master's cart, was taken ill, and stayed there some time, which occasioned him to lose his service. His master used to give him money occasionally during his service, but the pauper kept no account himself. A few days after his return from *Birmingham* his master settled with him; he did not know in what manner, but supposed the money was right, and thought his wages would come to about four shillings a-week. By Lord *Kenyon* C. J. It is clear that there must be either an express or an implied contract for a year, in order to give the servant a settlement. An hiring for 11 months will not confer a settlement, unless the sessions find that it was fraudulent, and that a year's service was intended, though 11 months only were expressed, as in the case of *Rex* v. *Milwich*, (Post.) where there was a hiring for 11 months, with an agreement to give in another month's service. Now in this case, the first hiring for 11 months was not sufficient to confer a settlement; but when that time was elapsed, the master told the pauper that he might *as well stay on an end;* which, in that part of the country, means an indefinite time. The second hiring, therefore, must be considered as a general hiring, which the law construes to be an hiring for a-year. As to this expression referring to the time for which the pauper was originally hired, it is too refined, it only referred to the nature of the service in which he was before engaged. Then if we consider the wages for which the pauper served under the second agreement, it negatives the idea that the parties contracted for another 11 months for the same definite sum which the pauper received under the first agreement; for it is stated that he received about four shillings a-week, which does not amount to the same apportionment of wages. *Ashhurst* and *Grose* Js. concurred.

Hiring ascertained; time implied.

and then *on an end*, gains a settlement, the latter being an indefinite hiring.

"To stay on an end in your place."

Rex v. *Astley*, *M.* 1815. *MS.* Cited 1 *Nol. P. L.* 357. Upon an appeal gainst an order of removal from the parish of *Corley* to the parish of *Astley* in the county of *Warwick*, the sessions confirmed the order, subject to the opinion of the Court of K. B. upon the following case: At *Michaelmas*, 1812, the pauper was hired by Mr. *Lillyman* of *Astley* for 51 weeks, at two guineas and a half wages, and went into his service and lived with him accordingly. About a fortnight before the expiration of the said 51 weeks, the pauper was hired again by her mistress Mrs. *L.* for another 51 weeks, to commence from the *Michaelmas* following; and on the day on which the first 51 weeks expired, and before the expiration of the said first 51 weeks, *she agreed with her master to serve him for the ensuing week ending at Michaelmas;* for which, a few days after *Michaelmas*, she received 1*s.* wages. Three weeks before the end of the first 51 weeks it had been proposed by the mistress, to the girl and her mother, that the girl should stay in her service *the odd week*, after the end of the first 51 weeks, and before the com-

Hiring for fifty-two weeks not a hiring for a year.

Hiring ascertained; time implied.

mencement of the second 51 weeks. The girl was unwilling, and would not say whether she would or not, but the mother was willing she should stop; but a full agreement for the week was not made until it was made by the husband *on the day on which the first 51 weeks expired.* At the time the pauper agreed with her master to stay the odd week, the other servant was gone, and her mistress was ill and near her confinement. The pauper staid in the service the odd week and the second 51 weeks. *Reader*, in support of the order of sessions, contended that the continuance of the pauper a week in the service after the expiration of the 51 weeks completed her year's service, and she thereby gained a settlement in the parish of *Astley*. — Lord *Ellenborough* C. J. The question is, not whether one week and 51 weeks make a year, but whether 52 weeks make a year. Fifty two weeks do not make a year, and consequently such a service does not give a settlement. — *Bayley* J. There are but 364 days in 52 weeks, and 365 days, 6 hours, and 49 minutes in a year. Unless therefore the whole of the latter time is included in the contract, no settlement can be obtained. — Ld. *Ellenborough* C. J. The question is purely arithmetical, and the sessions at *Warwick* will in future know the difference between a contract for 52 weeks, and a contract for a year. — Order of sessions quashed.

An indefinite hiring is to be considered as a hiring for a year.

Rex v. *Seaton* and *Beer*, *E.* 24 *Geo.* 3. 2 *Bott*, 202. *Cald.* 440. 1 *Nol. P. L.* 367. The pauper being settled in the parish of *Seaton* and *Beer*, went into the parish of *Broadclift*, and made an agreement with *Samuel Ponsford*, who kept a public-house there, as follows: "that *Ponsford* should give him one shilling a-week, as he had given the other man or men, and the vales of the stables. Nothing was said about the time of his service. At the end of the year his mistress said to him, "*You have been here a year, I will pay you.*" To which the pauper answered, "*It is no matter, I may stay with you another year.*" She said, "*Very well, Sampson.*" He did stay another year, and then received what was due to him, being 5*l.* 4*s.*; he worked in the stables as an ostler, and neither at the time of making the first agreement, nor at the end of the first year, was any mention made, either by the mistress or the pauper, of a hiring for a year, or of the term for which he was to serve; but the pauper apprehended that his master might have parted with him at any time, on giving reasonable notice. No evidence was given of the time for which any such man or men, as above referred to, had been at any time hired by *Ponsford*. The sessions confirmed the order of removal to *Seaton* and *Beer*. — *Willes* J. The first agreement was general, but the pauper was to receive wages like a former servant. I think the conversation at the end of the year was an agreement to serve another year, which makes it even stronger than the case of a general hiring. The case of *Rex* v. *Stockbridge* (*ante*, 353.) is decisive of the present question.—*Ashhurst* J. I am not for narrowing the determinations in favour of settlements; and this does not go so far as some other cases. *The general rule is*, that an indefinite hiring, without any circumstances to shew that a less time was meant, shall be considered as a hiring for a year. In this case, the first conversation would amount to an indefinite hiring; the second seems to shew, that it was in the mind of both, that it should be a hiring for a year. There are cases

General rule.

where it has been so held against the apprehension of both *Buller* J. It is settled in a variety of cases, that the apprehension of the pauper makes no difference. What the Court went upon in *Rex* v. *Dedham* was not the apprehension of the pauper, but a conversation between him and his master, explaining the original contract. That circumstance being laid aside, what *Yates* J. said in that case is decisive of this: for he considered the payment of wages weekly as making no difference. The first agreement would be sufficient, but on the second there can be no doubt.

Hiring ascertained; time implied.

See also *Wandsworth* v. *Putney*, *S. P. post*, p. 365.

Rex v. *Chertsey*, *T.* 27 *Geo.* 3. 2 *T.R.* 37. 2 *Bott*, 204. 1 *Nol. P. L.* 342. The pauper was hired for a year to Mr. *Shirley* for 4*l.*, and served that year in *Chertsey*. About three weeks before that service expired, her father, who was a day-labourer, in consequence of his wife's death, came to the pauper, and applied to her to come and live with him *to do the offices of a servant* for a year in the parish of *Thorpe*, and offered her board and lodging, and such profits as she could make by keeping fowls, and what she could earn by her own labour; and if that did not produce as much as she got at Mr. *Shirley's*, her father was to make up the difference. *She agreed* to those terms, and came accordingly, and lived with her father at *Thorpe* for a year and upwards, during which time she got about one guinea and a-half by keeping fowls, and two guineas and a-half by going out charing, and taking in plain-work; and at the end of the year, her father gave her 10*s*. as an additional recompence for her having gone to reap with him in the harvest month.—— *Ashhurst* J. All that is necessary to give a settlement under these statutes is, that there should be a hiring for a year, and a service for a year. As to the hiring for a year, it is only necessary to read the words of the case to determine it; it states, that the pauper's father applied to her to come and live with him to *do the offices of a servant for a year* on certain terms, which she agreed to, and that she came accordingly and *lived with him in pursuance of that agreement for a year.* The objection is, that this is no hiring, because the sessions have not stated that the pauper lived as an hired servant; but there is no occasion for the sessions to state that expressly, if it sufficiently appear from the terms of the contract; now in the present case that does appear. Then it was objected that the contract was not binding; but that is not so, she was hired to do all the offices of a servant for a year: the terms of the contract are not such as would enable the pauper absolutely to leave her father's service, but only to do particular work for her own benefit; she was first bound to perform all his work, and consistently with that, she was at liberty to gain as much as she could earn by her own labour: this therefore was a good hiring for a year. And as to the service, the case states that the pauper lived with her father in pursuance of the agreement for a year: this is by no means like the *Pittminster* case, (*ante*,) for there there was no hiring at all for any time.—— *Grose* J. In order to gain a settlement by hiring and service, there must undoubtedly be a hiring for a year, and a service for a year. But in the hiring it is not necessary to use technical terms; the word "*hiring*" need not be stated on the case; *it is sufficient if it appear that*

If an emancipated person go to her father for a year, "to do the offices of a servant," it is a good hiring, although it is agreed that she may earn what she can by her own labour besides.

"To do the offices of a servant."

The contract may be for the servant to work for himself, provided he be bound to do all his master's work.

What is evidence of a hiring.

Hiring ascertained; time implied.

the servant agreed to serve, and the master to pay for that service, for a year. Then the circumstance of the father being the master of his own child will not vary the case; this was not a hiring generally by the father as long as he lived, but a hiring for a year expressly: the father offered the pauper certain terms, which it is stated she agreed to accept; then there was a contract between them for the hiring; according to the terms of this contract she was not at liberty to desert her father's service, she was only permitted to do what other work she could consistently with her father's service, and her earning besides that will not prevent its being considered as a hiring for a year. And as to the service, it is expressly stated that the pauper lived with her father for a year *in pursuance of that agreement.* Both orders quashed.

If a person go to live with a relation, "as such, and not under any hiring," and afterwards go to live with him *as before;* this is no hiring for a year.

Rex v. *Stokesley, T.* 36 *Geo.* 3. 6 *T. R.* 757. 2 *Bott,* 190. 1 *Nol. P. L.* 347. *John Pickering* and his wife and family were removed from *Ovingham* to *Stokesley;* the sessions confirmed the order, and stated the following case: That the pauper was born in the parish of *Corbridge* in *Northumberland*, but not in wedlock, and was taken by his mother to the parish of *Stamfordham* in the same county, and was kept by her there till she died, at which time he was about six years old; he then went to live with her brother at *Mordon*, in the parish of *Sedgefield*, in the county of *Durham*, as a *relation, and not under any hiring*, being then about seven years of age; his said uncle farmed above 40*l.* a year, and set him to driving his plough soon after he went, and he continued working at the farm about eight years, but received no wages or other reward except meat and clothes, and he and his said uncle wrought all the work of the farm during the last three or four years of that period; the pauper having some difference with his uncle a little before *May-day*, went to *Darlington* hiring, and there hired himself to Mr. *Lax* of *Aircy Holme*, to be a servant in husbandry for one year, and served the same at *Aircy Holme* accordingly; shortly before the end of this service, he received a letter from his uncle, requesting his return to *Mordon*, and saying that if he would come and live with him *as before*, he could surely make it as good or better for him than a common service. During the year he was with Mr. *Lax*, his uncle had no regular hired servant, but employed a day-labourer to do such work for him as he did not like to do himself, and which the pauper used regularly, year after year, as he grew in strength, to do for him. Agreeable to his uncle's request, he returned to *Mordon*, and lived with him there about three years, and then went with his uncle to *Stokesley*, and lived with him there about four years and a half, during all which time he performed the greatest part of the work of the farm, as his uncle at that time kept no other servant, and was an elderly infirm man. When the pauper returned to his uncle he made no agreement with him, either for what time or for what consideration he should serve him, but his uncle often promised him, if he would stay with him for his life, he would leave him his stock, crop, and farm, as his own; his uncle's son having got a good place and being well provided for; his uncle of course found him meat and clothes, and used to give him a few shillings when he went from home, but nothing more. He left his uncle about *Martinmas*, and believed

himself at liberty to leave him at any time: he soon after married, and had not gained any settlement since; when they parted they had no reckoning, and did not part friends.—Ld. *Kenyon* C. J. The argument addressed to us (viz. that, as in *Rex* v. *Lyth*, *ante*, p. 347., if there be a service in fact, of such a nature as that usually performed by hired servants, it is presumptive evidence whereon to found a constructive hiring; that this was such a service; that the pauper was solicited to go; that he was independent when he went the second time:) might have had a good effect if addressed to the quarter sessions, but it cannot have any weight here, because the facts stated in the special case negative any hiring: indeed that argument applies as well to the first as to the second service, and the justices have expressly said that there was no hiring during the first service: they also state that before the pauper returned to his uncle, the latter proposed to him, *to come and live with him as before*, that is, in the same relation. This excludes the idea of any hiring for a year. I do not wish to break in upon those cases where it has been determined that a general hiring is a hiring for a year, or that a hiring under certain circumstances may be presumed; and if the justices in this case had found that there was a yearly hiring, it would have concluded the case; but here they have expressly found that the first service was not under any hiring, and that the second was *as before*, and we cannot contradict these facts, and introduce our own conjectures on the subject, in opposition to this finding. Order of sessions quashed. *Hiring ascertained; time implied.*

Rex v. *St. Matthew's*, *Ipswich*, *M.* 30 *Geo.* 3. 3 *T. R.* 449. 2 *Bott*, 188. 1 *Nol. P. L.* 347. *Edmund Stollers* and his wife were removed from *St. Nicholas* to *St. Matthew*, both in *Ipswich*; which was confirmed at the sessions, subject to the opinion of the Court on the following case:—About five years ago the waiter belonging to *S. Ribbands*, who kept an inn in *St. Matthew's*, being ill, sent for the pauper, (who was then a single man, and settled in *St. Nicholas*) to assist him at the inn, where he staid *as helper to the waiter* about six months, and then went away. The waiter being again taken ill, sent to the pauper *to help him*, which he did; and he continued in the inn as boot-catcher for nineteen months, during which time he lodged and boarded there, and was to be satisfied by the gentlemen who came to the house. *Ribbands* knew of his being there the night after he came, but nothing passed between him and the pauper at the time. The waiter who sent for the pauper continued in the service of *Ribbands* till about *July* in the next year, when he went away, and the pauper continued there till the *Christmas* following, when *Ribbands* and the pauper having some dispute, *Ribbands* told him to go away, upon which he asked for something for the time he had been there: *Ribbands* replied, he should not give him any thing, as he had made no agreement with him; but on being pressed again to consider his situation, he not having any thing to help himself, *Ribbands* gave him two guineas, and the pauper then left the house. The pauper considered himself not as a servant to *Ribbands*, but as assistant to the waiter, and thought himself at liberty to go away when he pleased; he saw *Ribbands* sometimes, who, if a guest wanted his boots, told the pauper to get them, and at other times sent him on errands.—Ld. *Ken-* Assistant to a waiter at an inn without agreement with the master.

Hiring ascertained; time implied.

yon C. J. There never was a case like the present, in which a hiring was presumed by retrospect. In the case indeed of *Rex* v. *New Windsor, post, a conditional* hiring with a proper service was held sufficient to gain a settlement; but there was an express hiring by the master when the pauper first entered into the service. To some of the positions which have been laid down at the bar I perfectly accede; as that there is no necessity for an hiring by the *master himself:* that if there be an hiring, it shall be presumed an hiring for a year, unless something appear to shew that the contrary was intended; and that wages are not necessary to confer a settlement on the servant. But the foundation of the argument here is, that the pauper was the servant of *Ribbands:* now that is expressly negatived by the facts of the case. For it is stated that the waiter, being ill, sent for the pauper, who went as *helper to the waiter;* and after staying there six months, went away; and that the waiter being afterwards taken ill again, sent for the pauper, who went a second time to perform the business for the waiter. And here the question arises, upon the determination of which this case must turn — In what situation the pauper was at that time? The case states, that he came there *as helper to the waiter;* and there is nothing in the case from whence we can infer that he was the servant of *Ribbands.* Therefore, down to the time when the waiter went away, it is impossible to say that there was any agreement between *Ribbands* and the pauper. It is true that we cannot refer the last six months of the pauper's service to any thing but a contract with *Ribbands;* but that is not sufficient to give a settlement. If indeed the pauper had been before in *Ribbands'* service, and had then lived under a yearly hiring, making in the whole a year's service, that would have gained him a settlement. But here was no contract with *Ribbands,* either express or implied, untill the last six months. The case of *Rex* v. *Weyhill, ante,* p. 269. is not unlike this: there indeed the pauper was taken out of charity; but in that, as well as in the present case, the pauper was taken in such a situation as excludes *an hiring* by the master. In cases where the nature of the service implies an hiring, the Court will raise such implication; but the nature of the service here implies the reverse. Small circumstances indeed have been held sufficient to raise a contract; as where the master told the pauper "to go into *Ned Hill's* place," (*ante,* p. 353.), it appearing that *Ned Hill* had lived there as a yearly servant; but it is to be observed that in that case there was some conversation between the master and the servant respecting the contract, but here there was none. — Orders quashed.

Implication.

Ante, p. 353.

A person's agreeing to live with his step-father, to work with him, and to be paid at a certain rate for what he should do, is not a general hiring for a year.

Hiring to work by the piece.

Rex v. *St. Peter's* in *Dorchester, M.* 4 *Geo.* 3. *Burr. S. C.* 513. 1 *Blac. Rep.* 443. 2 *Bott,* 197. 1 *Nol. P.L.* 373. The pauper, *John Milwood,* made an agreement with his step-father, to live with him in his house, to work with him at his trade of a button-maker, and to be paid at the rate of one penny for every gross of buttons he should make, deducting at the rate of 5*s.* a-week for his meat, drink, washing, and lodging. Under this agreement he lived with him four or five years in the parish of *Holy Trinity.* — By Ld. *Mansfield* C. J. This is the case of a workman hired to work by the piece. It is not like any of the cases where there was a hiring for a year. Indeed, hiring in general

and indefinitely gives a presumption of a hiring for a year, where the nature of the service and subsequent facts concur to render it probable that it was so meant. But the nature of the present service is quite otherwise. It is very clear in this case, that there was no hiring for a year, express or implied.

Yearly hiring; particular time of service.

Yet in *Rex* v. *Alton*, 24 *Geo.* 3.(*post.*) *Cald.* 424. 1 *Nol. P.L.* 416, it was held that where one made an agreement with his uncle to work in his trade by the piece, and to be paid by the piece for what he should earn, it was a general hiring, and equivalent to a hiring for a year.

Rex v. *Newstead*, *T.* 10 *Geo.* 3. *Burr. S. C.* 669. 2 *Bott*, 237. 1 *Nol. P. L.* 359. *Frances Downey* was hired at *Whitsuntide* 1767, to *Thomas Hill* at *Holy Island*, to serve him for a year from the said *Whitsuntide* to the *Whitsuntide* following, at certain wages. She entered upon the said service accordingly at *Whitsuntide*, 1767, and continued therein till *Whitsuntide*, 1768, when she received a year's wages from her master for such service. It was further stated, that it had been usual in the country to hire servants from *Whitsuntide* to *Whitsuntide*, and that a hiring and service from *Whitsuntide* to *Whitsuntide* had always, by the contracting parties, been deemed a year's service; and agreeable thereto the master had always paid the servant a full year's wages for such service, without any diminution thereof or addition thereto, and without making any distinction or difference, whether the space of time between the one *Whitsuntide* and the other consisted of more or less than 365 days.—It was argued that the space of time between *Whitsuntide*, 1767, and *Whitsuntide*, 1768, being less than a year (by sixteen days), no settlement was gained at *Holy Island* by this hiring and service, being both of them incomplete; and that though the Court have sometimes relaxed a little as to the service, yet they never relaxed as to the hiring.—But by the Court: there is no case that proves the absolute necessity that the hiring should be for exactly 365 days. It is stated to be the usual way of hiring servants in that country, and such service always deemed to be a year's service.—And it was adjudged that this hiring and service were sufficient to gain a settlement.

Hiring from Whitsuntide to Whitsuntide gains a settlement, though there be less than 365 days in that period.

And in *Rex* v. *Ulverstone*, *E.* 38 *Geo.* 3. 7 *T. R.* 564. 2 *Bott*, 243. 1 *Nol. P. L.* 359. 385. The pauper, being legally settled in *Ulverstone*, and being an unmarried woman, was hired by *M. Hodgson* of *Hawkshead*, to serve him from *Whitsuntide*, 1796, to *Whitsuntide*, 1797. She accordingly entered into his service on *Saturday* the 21st of *May*, 1796, and continued to serve him in *Hawkshead* till the *Thursday* before the following *Whitsunday*, being 1st *June*, 1797, when her master discharged her, she being pregnant of a bastard child, of which she was delivered on 1st *July* following. It was contended, that as in the above case of *Rex* v. *Newstead* a hiring from *Whitsuntide* till *Whitsuntide*, although less than 365 days, was holden a sufficient hiring for a year, so that where it appears to have been the intent of the parties that the hiring should be according to such ecclesiastical division of the year, the parties ought to be holden to the same term of service in order to gain a settlement, although it happened in this case to be more than 365 days; but as the pauper was discharged for a legal cause before *Whitsuntide* happened again, she could not

So although the service be ended before the following Whitsunday, but having continued for more than 365 days.

What shall be a year in the hiring.

gain a settlement. — Ld. *Kenyon* C. J. The case is too plain for argument. The only question is, whether a service for more than 365 days is not a service for a year? The term ecclesiastical year is altogether new, and was never before applied to this subject. — And it was held that a settlement was gained.

Hiring two days after Michaelmas till the following Michaelmas gains no settlement.

Coombe v. *Westwoodhay, H.* 5 *Geo.* 1. 1 *Str.* 143. 2 *Bott,* 243. 1 *Nol. P.L.* 357. *Michaelmas* day was on *Thursday,* and a person was hired upon the *Saturday* following, to serve till *Michaelmas:* and it was held to be insufficient to gain a settlement, being not a hiring for a year. It was in this case observed, that there must first be a hiring, and then a service: and not *vice versâ,* a service and then a hiring.

Hiring at a statute fair, if for less than a year, gains no settlement, though such a hiring be *customary.*

Rex v. *Harwood, T.* 20 *Geo.* 3. *Doug.* 439. *Cald.* 100. 1 *Nol. P.L.* 357. At *Otley* in the county of *York,* there is a custom for servants to hire by the year at two different statute-days; one on the *Friday* before *Old Martinmas,* and the other on the *Friday* next after *Old Martinmas.* At which latter statute-day they always hire till *Old Martinmas* day following, which by the custom is considered as hiring for a year. *Old Martinmas* day, in 1775, was on a *Tuesday.* On the *Friday* following, being the second statute day, the pauper hired till *Old Martinmas* day following, and served that time. — Ld. *Mansfield* was absent. The other three judges held this not to be a sufficient hiring for a year. And Mr. J. *Buller* said, there is no case where a hiring upon the face of it appears to be for less than a year, in which the Court has held that a settlement was gained; and it would be dangerous to make a new precedent of that sort. — And the reporter takes notice of the case of *Syderstone,* (*post,* 363.) and says, that in that case a hiring on the 11th of *October,* 1771, till *Old Michaelmas* day, 1772, was held to be a sufficient hiring, though there was nothing stated of any custom or usage.

And in *Rex* v. *Standon Massey, H.* 49 *Geo.* 3. 10 *East,* 576. *Bott, Cont.* 138. 1 *Nol. P. L.* 359. *Ongar* statute-fair is held yearly on the day after *Old Michaelmas,* except when *Old Michaelmas* day falls upon a *Saturday,* and then, on the following *Monday.* At *Ongar* fair 1806, held on a *Monday,* which was two days after *Old Michaelmas* in that year, the pauper was hired to serve *W. C. from the fair-day till the Old Michaelmas* day following: and the Court held without argument that no settlement could be gained under such a hiring, and that it was in no manner similar to a hiring from a moveable feast in one year, to the same moveable feast in another; and they said that the cases had gone far enough upon this subject.

Hiring the day after Michaelmas day to the Michaelmas day following gains a settlement.

Rex v. *Navestock, M.* 13 *Geo.* 3. *Burr. S. C.* 719. 2 *Bott,* 238. 1 *Nol. P. L.* 359. "*Thomas Fair* the pauper, at the statute fair at *Ongar* in the county of *Essex,* on the day next after *Old Michaelmas* day, to wit, on the 11th of *October,* 1733, hired himself to *Samuel Pasford* of *Navestock,* in the said county, to serve till the *Old Michaelmas* day following; he entered upon the said service, and continued in it till the *Old Michaelmas* day following; on which day he received his wages, and quitted the said service. It appeared to be according to the custom and usage of the country to hire servants at the said statute fair, namely, the day after *Old Michaelmas* day, in the

manner this pauper was hired. The question is, whether the hiring as above stated is a sufficient hiring for a year to give the pauper a settlement?" — By Ld. *Mansfield* C. J. (unto which the rest of the Court assented): There must be a hiring for a year. If the hiring be for less than a year, it will not do, be the deficiency ever so little. Two days or one day short of a year, are equally an objection to its being a hiring for a whole year. Hiring from a moveable feast to a moveable feast, according to the custom of the country, has been determined to be a hiring for a year. And here they have stated the custom and usage of the country, to hire servants in the manner this pauper was hired, namely, at the statute fair the day after *Old Michaelmas*. If this should be taken not to be a hiring for a year, there can be no settlement gained in this country by a servant; for all servants in this country are hired as the present pauper was hired. Therefore it seems no stretch to consider this as a hiring from *Michaelmas* to *Michaelmas*. — *Aston* J. It appears that the pauper entered on the day after *Michaelmas* day; " till" is the word relied on to prove it a hiring for less than a year. How has that word been understood? The pauper was in the service on the *Michaelmas* day, and took his wages; the service explains the hiring; here is in effect a hiring for a year, and a service agreeable to it. — *Willes* J. The custom of the country in such a doubtful case as this must be called in aid.

What shall be a year in the hiring.

Rex v. *Syderstone cum Bermer*, *Cald.* 19. 2 *Bott*, 239. 1 *Nol. P. L.* 358. *Charles Dawson*, being legally settled at *Syderstone*, applied on *Old Michaelmas* day to *J. E.* of *Milham*, to be hired by him, but on that day they could not agree about wages; *Dawson* asking eight guineas a year, and the other offering only six pounds. On which they parted. The next day, *viz. October* 11th, between two and three o'clock in the afternoon they were together at a public house in *Milham*, when *J. E.* asked him if he would take the wages offered him the day before, which he refused; but after some conversation *Dawson* hired himself to the said *J. E.* until *Michaelmas* following, at seven pounds wages; and entered his said master's service on the evening of that same day, 11th *October*, 1771, and staid in his service till 10th *October* following, being *Michaelmas*, 1772. On that day, his master not having finished his harvest, asked *Dawson* to stay and help him with his harvest; and *Dawson* thought himself at liberty to go away, yet he staid with his said master until the next day, to wit, 11th *October* at noon; when, after dinner, he asked his master for his wages, who paid him seven pounds; and *Dawson* quitted his service, but did not ask or receive any recompence for his additional service. The Court were clearly of opinion, that *Dawson* by this hiring and service gained a settlement at *Milham*.—Ld. *Mansfield* C. J. said, to be sure there must be a hiring for a year; and this is one. Though he was hired on the afternoon of the 11th, yet we shall say, that he was hired at twelve o'clock at night on the 10th: for it is settled, that the law will not allow the fraction of a day. He served till the 10th, that is a year. If a man be born on the 10th, he is of age on the 9th. — *Aston* and *Willes* Js. concurred.—*Ashhurst* J. was absent.

A hiring on October 11th till Michaelmas following, is a hiring for a year.

Hiring on the afternoon of the 11th is the same as on the night of the 10th at 12 o'clock.

Rex v. *Skiplam*, *M.* 27 *Geo.* 3. 1 *T. R.* 490. 2 *Bott*, 242.

If one be hired the day after

What shall be a year in the hiring.

Martinmas day till the Martinmas day following, *till* is inclusive, and it is a hiring for a year.

1 *Nol. P. L.* 358. Two justices removed *Elizabeth* the wife of *William Ware*, from *Beadlam* to *Skiplam*. The sessions confirmed the order, and stated the following case:—— That *Ware* the husband of the pauper, at *Old Martinmas* 1777, being then unmarried, hired himself for a year, and served that year in *Skiplam*: that on the next day after *Old Martinmas* day, (*viz.* on the 23d of *November*, 1778,) being then also unmarried, he hired himself to one *Barker* of *Nawton*, to serve him from thenceforth *until* Old Martinmas *day following*; and that he did accordingly enter into the service of the said *Barker* a few days after such hiring, and continued to serve him at *Nawton* until the *Old Martinmas day following*, on which day, about twelve o'clock at noon, he received his full wages, and left his master's house in the evening of the same day.— *Ashhurst* J. It is much to be lamented that there is such confusion in settlement cases; therefore, whatever the late determinations may be, they ought to be adhered to; now the last case, namely, that of *Rex* v. *Syderstone*, seems to correspond with this in every point: before that, a distinction had been made, as where the hiring and service had been expressly found to be for a year according to the custom of the country; but in the last case no such distinction was taken; so here there is no custom stated; and "*until*" must be taken to be *inclusive*. Therefore there was a hiring and service for a year, for he entered into the service the first day of one year, and served to the first instant of the next.—— *Buller* J. The only question is, whether *Martinmas* day is to be taken *inclusive* or *exclusive*? The pauper's husband was hired the day after *Martinmas* day, to serve *till the Martinmas day following*. From the moment of the hiring he became the servant of the master, and continued in the service *till Martinmas* day; then does the word "*till*" include the day? the former cases have decided that it does; and if it only included a *part* of the day, as there is no fraction of a day, the service would be complete.— Both orders quashed.

Hiring three days after Michaelmas till the Michaelmas following will gain no settlement, although there be a service for 365 days (being leap-year.)

Rex v. *Ackley*, *E.* 29 *Geo.* 3. 3 *T. R.* 250. 2 *Bott*, 242. 1 *Nol. P. L.* 357. The pauper being unmarried, on *Saturday*, 13th *October*, 1787, being three days after *Old Michaelmas* day, which was on a *Wednesday*, was hired to *J. Clarke* of *Ackley*, to serve him until the next *Michaelmas*. He accordingly went into such service, and continued therein till *Saturday* the 11th *October*, 1788, being the day after *Old Michaelmas* day, which was on a *Friday* (it being leap-year), and was paid his wages and went away. As this was a service for three hundred and sixty-five days the sessions thought it gained a settlement in *Ackley*, and confirmed the order by which he and his wife were removed from *Bicester Market End* to *Ackley*. But the Court were clearly of opinion that here was no hiring for a year; this was a hiring for two days short of a year; and though the Court has been extremely indulgent with respect to *services*, they have been always strict with regard to hirings. Order of sessions reversed.

Yearly and Month's Warning; and going on liking.

H[illegible]ng for a year at 4l.

Rex v. *Atherton*, *H.* 16 *Geo.* 2. *Burr. S. C.* 203. 2 *Bott*, 249. 1 *Nol. P. L.* 362. *Ralph Harrison* was hired for a year to

Thomas Barlow of *Barton*, at 4*l*. wages, payable quarterly. And it was agreed between them, at the time of the hiring, that either of them should be at liberty to determine the contract, at the end of any quarter of the said year, on a month's notice. But no such notice was ever given by either; and the servant continued in his said master's service in *Barton* the whole year. The servant declared at the time of the hiring, that the reason of the said hiring being made determinable at the end of every quarter upon such notice as aforesaid, was, that he would not be hired so as to lose his former settlement. But by the Court unanimously and clearly: this is a good settlement in *Barton*.

What shall be a hiring for a year.

wages, payable quarterly, with liberty to part on a month's notice at the end of any quarter, is a yearly hiring.

Rex v. *New Windsor*, *H.* 8 *Geo.* 2. *Burr. S. C.* 19. 2 *Bott*, 248. 1 *Nol. P. L.* 362. 365, 366. *Diana Brookes* was hired to Colonel *Merrick* at *Thorpe*; and was to go into her service a month upon liking; and was to have 5*l*. a year wages; but was to go away from her said service, on a month's wages or a month's warning on either side. She continued near two years in her said service, without any other hiring, and received her wages quarterly. This, by the unanimous opinion of the Court, is a hiring for a year at *Thorpe*: and she gained a settlement there.

A hiring at 5l. per year wages, with liberty to part at a month's wages or warning, is a yearly hiring.

Wandsworth v. *Putney*, *E.* 13 *Geo.* 3. 2 *Bott*, 191. 1 *Nol. P. L.* 366. Where the master told a boy coming into his service, that if he staid a year and behaved well, he would give him a livery and wages the next year; this also was held to be a clear yearly hiring.

Rex v. *Lidney*, *T.* 6 & 7 *Geo.* 2. *Burr. S. C.* 1. 2 *Bott*, 247. 1 *Nol. P. L.* 361. *Martha Brewer* was hired to *William Wake* in the parish of *Stroud*, for a quarter of a year; and if her master and she liked one another, she was to continue for a year, and to have 3*l*. for her year's wages. She entered into the said service, and continued therein one whole year, and received the said wages of 3*l*. It was argued, that as it was in the election of either party, during the first quarter, whether she should continue or not, she consequently could not be originally hired for a year. But the Court held this conditional hiring to be a good hiring for a year: since the master and she did like one another, and a year's service was actually performed under it.

Hiring conditional as to liking, if the service continue, a good hiring for a year.

Rex v. *St. Ebbs*, *H.* 22 *Geo.* 2. *Burr. S. C.* 289. 2 *Bott*, 249. 1 *Nol. P. L.* 361. Two justices remove *Caleb Guy* from *Holywell* to *St. Ebbs*. And the sessions upon appeal confirm that order. The case was, the said *Caleb Guy* was hired to *Thomas White* of *Holywell*, thus: he was to come for a quarter of a year, and to have after the rate of 20*s*. a-year; and if he and his master liked each other, he was to continue. He did continue a year and a half above the said quarter, without any further or other hiring, and received his wages as he had occasion for them. It was moved to quash these orders, for that the settlement was in *Holywell* by this hiring and service: for a conditional hiring is a hiring for a year, provided the condition be performed. And a rule was made to shew cause. But no cause was shewn. And the rule was made absolute.

Retrospective Hirings.

Rex v. *Ilam*, *M.* 25 *Geo.* 2. *Burr. S. C.* 304. 2 *Bott*, 245. 1 *Nol. P. L.* 361. *Rowe Port* of the parish of *Ilam*, esquire,

Hiring for a year, part of

Particular conditions of service.

which was then past, gains no settlement.

hearing that the pauper was a likely boy to serve him as his postillion, sent to the pauper's father to have him upon liking. After the pauper had served Mr. *Port* eight weeks on liking, Mr. *Port* hired him for a year, to commence from the beginning of the said eight weeks. He served Mr. *Port* in the said parish of *Ilam* a year, (including the eight weeks) and ten days, and no longer. — By *Lee* C. J. This case differs from all the former cases. In *Rex* v. *Lidney* the first hiring was conditional, for a quarter of a year upon liking; and if they did like each other, then to continue for a year: yet it was holden a good settlement, as they did like each other; and the year's service was performed. In *Rex* v. *New Windsor* it was uncertain, till the end of the year, whether the hiring would be for a year, yet happening so in event, it was held good. In the present case the commencing of the hiring was eight weeks after the boy had been upon liking, with a retrospect to his first coming into the service. Now a man cannot serve from a day past. Mr. J. *Foster* thought the cases of *Rex* v. *Lidney*, and of *Rex* v. *New Windsor*, had carried the matter as far as possible; and if they were new questions, he should doubt of those resolutions: but both those were hirings for a year, previous to the service; and the conditions were performed. He observed also, that the safest way is to adhere strictly to the words of the act of parliament; for refinements upon these questions have produced infinity of questions and difficulties. And the Court were of opinion, that the pauper by virtue of this hiring gained no settlement in *Ilam*.

Retrospective hiring not sufficient.

Rex v. *Marton*, *E.* 31 *Geo.* 3. 4 *T. R.* 257. 1 *Nol. P. L.* 361. The pauper, when he was about eighteen or nineteen years of age, went into the service of *W. Fisher*, in *Marton*, and stayed about a fortnight or three weeks without any hiring or agreement of any kind being made between them. The pauper's father then made an agreement with *Fisher* for the pauper to serve him for a year at 2*s.* 6*d.* per week. The time he had then served was to make a part of and be reckoned in the year. He stayed in *Fisher*'s service upwards of fifteen months from his first coming, and he received his wages according to the above agreement. — And it was admitted that, by the cases of *Rex* v. *Ilam*, and *Rex* v. *Hoddesdon*, *Cald.* 23., a retrospective hiring was not sufficient.

(*e*) Hiring for a Year, under particular Conditions as to the Service.

Hiring for a year to spin yarn at so much per stone, will gain a settlement.

Rex v. *King's Norton*, *T.* 13 & 14 *Geo.* 2. 2 *Stra.* 1139. 2 *Sess. Ca.* 146. *Burr. S. C.* 152. 2 *Bott*, 209. 1 *Nol. P. L.* 378. *Mary Calcut* was hired for a year to spin yarn at eighteenpence a stone, and was to provide herself with meat, drink, washing and lodging where she pleased. She spun for her master the whole year, and boarded and lodged at her master's, allowing 2*s.* a-week for the same: — By the Court: This case hath all the requisites of the statute, and is a good settlement. For in fact here is a hiring and a service for a year. And whether she was paid by the year, or by the quantity of her work, was immaterial.

A hiring "for a year" to make

Rex v. *Birmingham*, *H.* 20 *Geo.* 3. *Doug.* 333. *Cald.* 77. 2 *Bott*, 217. 1 *Nol. P. L.* 342. 376. 378. 404, 405. The case stated, that

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Thomas Baker was hired in the parish of *Birmingham*, by *John Jennings*, a wood-screw-maker, for a year, "good earn, good hire," to work for him and no other master, to make screws at so much per gross: and this was all that passed upon the hiring; that persons are often hired at *Birmingham* under the terms 'good earn, good hire,' the meaning of which is, that their pay is to depend upon their work. *Baker* had no wages; he was to have what he got. If he got nothing he was to have nothing. His master had no business but that of a screw-maker. He was to work in his master's shop, and do no other work. He served a year under the hiring, and during the year sometimes lodged with his master, sometimes in another house in the parish, and when he lodged with his master he paid him for his diet and lodging. He sometimes absented himself to drink or play, for a week or fortnight, and never asked his master's leave for such absence. His master, on his return, was angry, and checked him, but always received him again. During such absence, he never worked for his master or any other person. And it is generally understood at *Birmingham*, that persons hired to work in shops, under the above terms, may occasionally absent themselves, but cannot work for another master. The Court considered that this was a good hiring and service.

screws at so much per gross, "good earn good hire," will gain a settlement.

Rex v. *Woodhurst*, *H.* 58 *Geo.* 3. 1 *B.* & *A.* 325. Removal from *St. Ives* to *Woodhurst* in *Huntingdonshire:* the sessions confirmed the order, subject to the opinion of the Court of K. B. on the following case: — In the year 1809, *George Hera*, the pauper, being legally settled in *Woodhurst* in the county of *Huntingdon*, and unmarried, was afterwards hired by *William Margetts* of *St. Ives* in the said county, brickmaker, to work in *St. Ives* under a written agreement, which Mr. *Margetts* states to be lost, and to be as follows: "I *George Herd* have this day agreed to serve *William Margetts* as a brickmaker from *Michaelmas* to *Michaelmas* again. The said *George Herd* engages to make 70,000 bricks at so much for digging and turning, so much for moulding and making, and so much for running to the kiln." This was all the contract; nothing was said as to the time he was to begin to dig; he probably began in *November*, and then worked on the said kilns under that contract, not having finished his 70,000 bricks till after *Michaelmas* following. It appeared from the evidence of the master and pauper, that as soon as the pauper had made the 70,000 bricks according to his contract, his master had no controul over him, and he might go where he pleased, even if it was a month before *Michaelmas*, and if he stopped and made more than 70,000 bricks he was to be paid for them, and the master could set him to no other work than brickmaking. After argument, Lord *Ellenborough* C. J. said, there was not a contract which, properly speaking, had relation to time. The pauper engages to serve only until a particular job be done: if the bricks were made before the year expired his service would terminate. So that unless he finished the last brick exactly at the year's end, which would be very improbable, he would not serve for a year. It is therefore only a contract for that individual job, and the introduction of time into the agreement is wholly irrelevant. —Order of sessions confirmed.

Hiring to make a certain quantity of bricks, no settlement.

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If one be clubbed for three years, to be taught a trade, and contract to do any work he may be set about, it is a good yearly hiring.

Rex v. *Coltishall, E.* 33 *Geo.* 3. 5 *T. R.* 193. 2 *Bott*, 228. 1 *Nol. P. L.* 480. 3*d edit.* At *Lady-day*, 1785, the pauper being about eighteen years of age, and a bricklayer's labourer, and settled at *Horstead*, was *clubbed* with *John Rolfe* of *Coltishall*, for three years, at 6*s. per* week the first year, 7*s.* the second year, and 8*s.* the third year; to board, lodge, and wash for himself: he was to be taught the trade of a bricklayer. An agreement in writing was to be prepared for three years, but was never done. The pauper served two years and upwards, and then upon some difference his master and he consented to part. No premium was paid by the pauper to *Rolfe*. The pauper *was to do any work Rolfe set him about*, and was not to be absent from his business during any part of the time. — Ld. *Kenyon* C. J. said, that it was impossible to raise a doubt upon the case; for that the concluding part of it, which stated that "the pauper was *to do any work* his master set him about," was decisive to shew that he must be considered as a hired servant; and that although *one* of his objects *was* to learn a trade, that was deemed equivalent to part of his wages.

So if there be a stipulation in the contract to deduct wages for illness, &c. and an agreement to do any other work he might be set about.

Rex v. *Martham, H.* 41 *Geo.* 3. 1 *East*, 239. 2 *Bott*, 228. 1 *Nol. P. L.* 378. *A.* clubbed with *B.* a bricklayer, (which signifies serving another for the purpose of learning a trade) for three years at a certain rate of weekly wages, to learn the trade of a bricklayer, *and to do any other work* his master might set him about, with a proviso, that if he were prevented from working by bad weather, illness, or want of employment, there should be a proportionable deduction of wages: it was holden that *A.* gained a settlement by serving a year under that hiring, though occasional deductions on those accounts were made. The case was decided upon the foregoing case of *Rex* v. *Coltishall*.

After hiring himself for a year to a brickmaker, the pauper entered into a written contract (unstamped and without seals) to serve his master for three years, to learn to make bricks. Held to be a new hiring in the relation of master and servant.

Rex v. *Inhab. of Shinfield, M.* 52 *Geo.* 3. 14 *East*, 541. *Bott, Cont.* 152. 1 *Nol. P. L.* 352. 416. 448. *Martha Lanesbury* was removed from *St. Giles's* in *Reading*, to *Shinfield* in the county of *Berks*, and the order was confirmed by the sessions, (subject, &c.) Case:—The pauper's husband, *Richard Lanesbury*, in *June*, 1806. (before his marriage,) being then a minor, hired himself for a year to *James Palmer* of *Shinfield*, brickmaker, and continued from that time upwards of a year in *Palmer*'s service. On 29th *September*, 1806, the pauper's husband (being still a minor) and *Palmer* signed the following agreement on unstamped paper, and not under seals, under which the pauper's husband served the whole three years: "A memorandum and agreement between *James Palmer* and *Richard Lanesbury*; this agreement made the 29th of *September*, 1806, between *James Palmer*, brickmaker, of *Shinfield* in the county of *Berks*, and *Richard Lanesbury* of *Sonning*, &c. I, *Richard Lanesbury*, do hereby covenant and agree to serve *James Palmer* for three years to learn to make bricks, and the art of burning, on condition of the said *James Palmer*'s finding me the said *Richard Lanesbury* sufficient victuals, drink, lodging, and clothes, and to be decently clothed in the habit of a working-man at the expiration of the three years, on condition of my helping to attend the kiln on nights: Whereas I have hereunto set my hand this 29th of *September*, 1806. (Signed) *Richard Lanesbury*." and attested by two witnesses. And in the margin of the paper, near the attestation, was written, "I, *James Palmer*, consenting to

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the above agreement." The appellants produced *Richard Lanesbury*'s mother, who swore that *Palmer* came to her and asked her if she had any objection to her son being apprenticed to him, and she said, " No. " — After argument, Lord *Ellenborough* C. J. This was the case of a person who, though a minor, had power to contract for a hiring and service to another, or as an apprentice, (as in *Drury* v. *Drury*, cited in 2 *Term Rep.* 161.) *Quâcunque viâ dátâ*, the pauper gained a settlement in *Shinfield*; for if the instrument were invalid as being a fraud upon the law, it is clear that there was no good apprenticeship created, because it was not created in the manner prescribed by the law; and if invalid and not receivable in evidence, what is there to do away the former contract of hiring for a year? But supposing it to be valid and not operating as an apprenticeship, but as a hiring in the relation of master and servant, what is this but the case of a continuing service operating under a new contract of hiring, merely superadding other terms whereby the servant was to have food and clothing provided for him in the manner stated, and an opportunity of learning the trade of his master, instead of seeking for a compensation for his service upon a *quantum meruit*. It is therefore unnecessary to determine whether or not this was a good contract of hiring and service as created by the written instrument. And all the cases cited by the appellant's counsel differ from the present, because in none of them was there a good contract of hiring and service, independent of the imperfect contract of apprenticeship in dispute. But here there was an original perfect contract of hiring and service, which was not defeated by an invalid instrument. With respect, however, to the case of *Rex* v. *Little Bolton*, the Court, in the case of *Rex* v. *Eccleston*, considered it as a subsisting authority, whatever question there might have been upon the subject at first, and I think the convenience of the thing is in support of it, but it is not necessary now to discuss that point. — *Grose* J. Here there was originally a good contract of hiring and service, and that was not done away with by the subsequent instrument, whereby the parties merely prolonged the duration of the contract, and fixed the compensation to be made by the master for the service. — *Le Blanc* J. This case is distinguishable from all the former cases in which the question has been, whether the contract was to serve as an apprentice, or as a hired servant; where if the Court considered that the contract was to serve as an apprentice it could not enure to give a settlement, as in the case of an hired servant, for in none of those cases was there any valid contract of hiring and service existing before, independent of the instrument in question. But here the husband of the pauper had first entered into a good contract by parol, as a hired servant for a year, and pending that contract he and his master entered into a written agreement, by which it is contended that the parties meant to contract for an apprenticeship, and that this, though invalid for the purpose of creating an apprenticeship, yet changed the nature of the service under the former hiring into a service as an apprentice, and therefore prevented the gaining of a settlement as a hired servant. — But I do not accede to that argument; because, if there were at one time a subsisting valid contract of hiring and

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service for a year, and pending that the parties enter into an invalid agreement, I do not see how that can do away the former valid contract. But even upon the construction of the written instrument itself I do not think that it is to be taken as a contract of apprenticeship. In all the former cases where the instrument in question has been so construed, it has been stated, that the parties intended to contract in the relation of master and apprentice, only they had contracted informally, in order to avoid the stamp duties. But here the contract is for *Lanesbury* to serve *Palmer* for three years, to learn the art of a brickmaker on condition of *Palmer*'s finding him in board, lodging, and clothes; there is no contract by the master to teach him, but only for the boy to have the opportunity of learning the business. It is said, that no wages are reserved, but that is no more than what often happens with boys at service, they get less at first, because they must first learn their business before they can be of use to their masters in it. Then, though it is stated here that the boy was to serve his master to learn his business, that would not prevent it from operating as a contract of hiring and service. I do not think, therefore, that this was in the terms of it an agreement for an apprenticeship, so as to supersede the former contract of hiring and and service. But even if it were intended as an apprenticeship, yet the instrument being invalid, would not supersede the former valid contract.—*Bayley* J. I consider the instrument as a contract of service, and not as an apprenticeship. There was an original good contract for a year between the parties as master and servant generally, and after three months' service generally under it, they entered into a new agreement by which the boy was to serve his master for three years, not generally, but to learn to make bricks and the art of burning, upon condition of being found in board, lodging, and clothes. The meaning of the parties, therefore, was, that the general service before contracted for should be restrained to such service as would enable the boy to learn his master's business. If an apprenticeship had been intended, there would have been words introduced into the agreement binding the master to teach the boy, and there being no such words of obligation on the master, and the written contract not having the ordinary words of binding to serve as an apprentice, and the intent of the parties, as collected from the terms of it, being at least equivocal, we are warranted by the cases in saying, that the object of it was merely to confine the general service, before contracted for, to such parts of the master's employ as would enable the boy to learn his business. If this, therefore, was to give an extraordinary benefit to the servant, the master might well stipulate for receiving such service without the payment of wages.—Orders confirmed.

A verbal contract by the father that his son should work with another as a frame knitter for 2 years to have what he earned, and to allow the master 2s per week

Rex v. *Burbach*, *E.* 53 *Geo.* 3. 1 *M.* & *S.* 370. *Bott*, *Cont.* 155. 1 *Nol. P. L.* 487. 3*d edit.* The sessions for the county of *Leicester* discharged an order for the removal of *Mary*, the wife of *William Timpson*, and her infant child, from the parish of *Burbach* to the parish of *St. Mary*, *Birmingham*, subject, &c. Case: The pauper's husband was born at *Birmingham*, where his father was legally settled. The pauper's husband being then unmarried, and having no child, his father made a verbal agreement with one *Richard Palmer* of *Burbach*, in the county of *Leicester*, frame-work-

knitter, that his son should be with him (*Palmer*) and should work with him for two years, and have what he got, and that he should allow two shillings *per* week out of his gains to *Palmer* viz. one shilling for his (*Palmer's*) teaching him the business of a frame-work-knitter, nine-pence for the rent of a frame, and three-pence for the standing of the frame. Nothing was said about his being an apprentice. The pauper's husband went and served *Palmer* for two years at his house in *Burbach*, and had what he earned after the two shillings *per* week were deducted by *Palmer*, who found a frame and all materials, but the pauper's husband paid for the needles himself; and in regular work he earned about ten shillings *per* week. The pauper's husband had no right to work for any body else in *Palmer's* frame, nor did he do so to *Palmer's* knowledge; he received no wages, and boarded and slept all the time at the house of his father and mother in *Burbach*, where he also had his washing done for him; and he did not do any act as a servant for *Palmer* by his order; and on *Sundays* he was at his father's house. — After argument, Ld. *Ellenborough* C. J. The ground of argument taken is, that the father was the contracting party, and could not bind the son. It certainly cannot be contended that the son would at all events be bound by the contract of the father; but in every case, if a contract be made by a person standing in a peculiar relation to another, on his behalf and for his benefit, and that other performs his part of the contract, there is no authority which should restrain me from leaving to the jury whether he did not adopt the contract. It seems absurd to say that if a party contract on my behalf that I should do work, and I do it, that the rule of *omnis ratihabitio* does not apply. Every jury upon such a question would find a previous *mandatum* evidenced by the service afterwards. Here the son is acting as servant; but if it were doubtful, the sessions have drawn the conclusion, and have not submitted to us any question whether he was bound by the contract. The question then is, whether this is a contract of hiring and service, or of apprenticeship. It certainly cannot be called an apprenticeship, nor does it bear any of its forms; for although there is mention of an allowance to be made by the son on account of the master's teaching him the business, yet that is not peculiar to the contract of apprenticeship: it enters into the contemplation of almost every contract of hiring and service how far the servant has learnt his art, or stands in need of farther instruction; and according to his proficiency a consideration is made in the rate of wages. It is the measure to which each party resorts in apportioning the compensation; and if the circumstance of the servant's having to learn his art is to make a difference, it would change the nature of most contracts of hiring and service, even in the meanest situations, into that of an apprenticeship. As to *Rex* v. *Little Bolton*, without saying whether one quite approves the principle of that case, it is enough to say that the Court has been so much in the habit of acting upon that decision that it would now be dangerous to set it aside. I do not say that if that case were erroneous and wholly destitute of legal foundation, it would not be right to set it aside; but if it stands on plausible grounds, it ought not to be canvassed too nicely. This case is stronger than *Rex* v. *Little Bolton*; there the master agreed to

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for instruction and the use of a frame and standing; held to be a contract of hiring and service, and not of apprenticeship, and that the son's having served under it is evidence that he had adopted such contract.

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teach the pauper if he would work with him two years and a half or three years; so that the teaching was of the very essence of the contract. Here there is no express contract by the master to teach, only an allowance by the servant out of the earnings for teaching, which perhaps may amount to an implied one. I will not say that an action might not be maintained upon this contract for not teaching, although upon a demurrer to a declaration framed upon it there might be difficulty. Admitting however that such a contract may be inferred, it is by no means so clear as assumed in argument: and even if it were, it would not be so strong as *Rex* v. *Little Bolton*, which was an express contract. There Ld. *Mansfield* observed upon the agreement, not speaking of the pauper as an apprentice, and here there is no mention of apprenticeship except as far as learning and teaching are ingredients in the contract of apprenticeship, which they are also in almost every contract of hiring and service regularly entered into. Therefore, without saying that *Rex* v. *Little Bolton* is not law, we cannot hold that this is not a good hiring and service. — The other judges concurred. — Order of sessions confirmed.

Parol contract. Master to receive money for teaching pauper to make stockings.

Rex v. *Bilborough*, *M.* 58 *Geo.* 3. 1 *B.* & *A.* 115. 1 *Nol. P.L.* 353. Where by a parol contract the master agreed to teach the pauper to make stockings during the year, for which he was to receive two guineas, and the pauper was to have his earnings, paying his master for the use of the frame, &c. and the pauper continued in the service a year and a half: it was holden that the pauper did not gain a settlement by hiring and service. Ld. *Ellenborough* C. J. said, In this case the pauper never contracted to *serve* the master, the only agreement was, that the master should *teach* the pauper for a year. In *Rex* v. *Burbach*, there was an agreement on the part of the pauper to work for two years; that forms an essential distinction between the two cases.

Rex v. *St. Mary's Kidwelly*, *H.* 5 *Geo.* 4. *MSS.* *B.* & *C.* 1 *Nol. P. L.* 353. A son being desirous of being apprenticed to a shoemaker, his father agreed with *J. T.* to give him a guinea for teaching his son the trade of a shoemaker, for twelve months, the father finding lodging and every thing else. There was no indenture or writing, but the son was treated and addressed as an apprentice, and served the twelve months under this agreement. This was held not to create the relation of master and servant, but only one of teacher and scholar. *Rex* v. *Bilborough*, *supra*, was cited.

(*f*) Limited or Colourable Hirings for the Purpose of avoiding Settlements.

Hiring three days after Michaelmas till the Michaelmas following, gains no settlement;

Rex v. *Mursley*, *E.* 27 *Geo.* 3. 1 *T. R.* 694. 2 *Bott*, 246. 1 *Nol. P. L.* 357, 358. *William Coleman*, the pauper, was born at *Redbourn*, and *three days after Michaelmas*, 1782, he was hired by *J. Pollard* of *Mursley* to serve him in husbandry, *until the Michaelmas following:* he served the whole of that time, and received the whole of his wages. At the time of hiring, *Pollard* told him he should not belong to *Mursley*. The sessions stated it as their opinion, that all such transactions on the part of masters are fraudulent, to prevent servants gaining settlements; and adjudged that the pauper gained a settlement at *Mursley* by

although such contracts are

such hiring and service, and confirmed the order, by which the pauper and his wife were removed from *Redbourn* to *Mursley*. But by the Court: It is very clear that this is not a hiring for a year so as to gain a settlement. And as to the question of fraud, *Buller* J. said, *that* only arises where in truth there is a hiring for a year, and a service for a year, and the parties endeavour to colour it in order to prevent the settlement; in such a case the Court may say it is fraudulent; but a master may, if he please, hire a servant for less than a year, for the express purpose of preventing his gaining a settlement. Both orders quashed.

R. v. Mursley.

stated to be fraudulent.

A pauper may be hired for less than a year to prevent his gaining a settlement for such a hiring is not necessarily fraudulent.

Rex v. *Haughton*, *T.* 4 *Geo.* 1. *Fol.* 137. 1 *Stra.* 83. 10 *Mod.* 392. 2 *Bott*, 252. 1 *Nol. P. L.* 356. *John Evans* was hired with *Ralph Trubshaw* of *Haughton*, from *Ash Wednesday* till *Christmas*, and served him that time. Then he went away from him, and stayed with his father in *Ranton* about a week. Then he returned to the said *T.* and was again hired with him for 11 months, and served him for 11 months. Then he departed from the said *T.* and took his clothes with him, and was absent one week. Then he returned to the said *T.* and was hired with him for 11 months, and accordingly served him; and then left that service, and went to his father in *Ranton*, and stayed about one week. Then the said *John Evans* served one *John Sutton* of *Haughton* aforesaid for about three weeks, then returned to *Ranton* aforesaid, and stayed for about a week: and then returned to the said *John Sutton*, and hired with him for 11 months, and served with him within a fortnight or three weeks of the last 11 months, when, by agreement with the said *Sutton*, to avoid a settlement in the parish of *Haughton* aforesaid, he left him, took his clothes, and went into the parish of *Gnosall*, and there continued about a week; then returned to the said *Sutton*, and continued with him so long as to make up his service for the last 11 months; and three weeks before *Christmas* the said *John Evans* hired himself again to the said *Sutton* for another 11 months, and served him from that time till within three weeks of *Michaelmas* following, and then came away, and married. The question was, whether these several hirings were sufficient to gain a settlement in the parish of *Haughton?*—*Parker* C. J. said, this was an apparent fraud, and different from all the other cases. — *Pratt* J. said, I doubt we must take the law to be, that there must be a hiring for a year, and a service for a year: Here the sessions have found specially, that there is neither hiring nor service for a year: And suppose a man that lives in a parish encumbered with poor, hires a servant for 11 months only, purposely, by way of caution, to prevent a charge upon the parish, the intent is lawful, and how can such hiring and service gain a settlement? And as to the matter of fraud, if there be any, the justices of the peace are judges of that. — *Eyre* J. was of the same opinion as *Pratt* J. (*Powis* J. being absent). Afterwards, in *Easter* term, after long debate and consideration, the opinion of all the Court was, that these hirings and service in the parish of *Haughton* were not sufficient to gain a settlement: and though such hirings as in this case do defeat settlements, yet if that be a mischief, it is to be remedied by the legislature, and not by the Court, which is to judge on the law as it stands.

Hiring for eleven months gains no settlement, although it was so limited for the purpose of avoiding gaining a settlement.

Rex v. *Milwich*, *T.* 30 & 31 *Geo.* 2. 2 *Burr. S. C.* 433. 2 *Bott*,

But a hiring for eleven months,

R. v. Milwich.

and to give one month over, gains a settlement.

210. 1 *Nol. P.L.* 344. 428, 429. *Thomas Thacker* was hired at *Milwich* for 11 months for 4*l.* 10*s.* and it was agreed between him and the master, that he should give in a month's service beyond the 11 months. He served the 11 months, and also the given-in month, except the last three days, and he could not say whether he served them or not; but he received the whole 4*l.* 10*s.* wages. It was moved to quash these orders; because this was not a hiring for a year, being only for 11 months; nor a service for a year, because three days were wanting at the end of it. But the Court were very clear, that this agreement was a manifest contract to serve for a year, notwithstanding the form of expression (which by the way they considered as an attempt to prevent the man's gaining a settlement, by a very paltry evasion). The real question was no more than whether 11 and 1 make 12? There are no particular technical words necessary to make a hiring for a year. The substance of this agreement is, to serve 12 months, for 4*l.* 10*s.* And what signifies the variation of expression? Every contract to serve is a contract to serve for a year, unless there be something to explain it otherwise; and certainly there is nothing here to explain it otherwise. And no action could have lain for the wages, till the end of the whole 12 months. And as to the servant's going away three days before the end of the year, the state of the fact doth not support the objection. He could not say whether he did or not. But he received the whole 4*l.* 10*s.* wages; which at least seems to imply the master's consent or permission. (See *Rex* v. *Sulgrave*, *post*, p. 401.

(g) Of Exceptive Hirings.

Hiring for a year with liberty to be absent eleven or twelve days sheep-shearing, gains no settlement.

Rex v. *Empingham*, *M.* 15 *Geo.* 3. *Burr. S.C.* 791. 2 *Bott*, 217. 1 *Nol. P.L.* 382. The pauper, *Joseph Langton*, some little time before *Harborough* fair, was hired to *Henry Hubbard* of *Fleckney*, from that *Harborough* fair to the *Harborough* fair next following, being one year, at the wages of 3*l.* '*subject to a liberty of being absent* 11 *or* 12 *days in the sheep-shearing season*,' and to have the benefit of what he got during that time. He entered upon his said service, and served the said *Henry Hubbard* at *Fleckney* for above three quarters of the year. He went to shear sheep in the season, for about 11 days, and served the said *Henry Hubbard*, at *Empingham*, the remainder of the year. He received to his own use what was paid him for the sheep-shearing, over and besides his wages of 3*l.* One day in the season, he asked his master's leave to go a sheep-shearing: his master said he was going out, and could not spare him that day; and in consequence thereof he did not go. The pauper, during the shearing season, returned frequently to his master's house, and did what work was to be done; and his master found him his board as often as he returned home. The Court were unanimously of opinion, that this was an exception out of the contract at the time of making it. They held it to be a part of the contract, and not to be considered upon the foot of leave of absence given by the master; who being bound by the contract, could not refuse agreeing to it. The militia-man's case, they said, was a particular case. It was no more than the law would have implied.

(*See* p. 176.) And it was determined that no settlement was obtained under this hiring.

Stipulations for absence.

Rex v. *Bishop's Hatfield*, *H.* 31 *Geo.* 2. *Burr. S. C.* 439. 2 *Bott*, 211. 1 *Nol. P. L.* 382. A man was hired from *Michaelmas to Michaelmas*, for 5*l.* wages, '*with liberty to let himself for the harvest month to any other person.*' He served till the harvest month, and then hired for that month, and received wages for it. During that month he brewed for his master, and lodged in his master's house at *Saundridge* during the whole year; and served out the remainder of his time, and received his 5*l.* wages. By the Court: This is in effect only hiring for 11 months: and the harvest month is the principal month of the year. It is safest to keep to the statute. If we allow this, we shall not know where to stop.

Hiring for a year with liberty to be absent during the harvest month, gains no settlement.

Rex v. *Rushulme*, *M.* 49 *Geo.* 3. 10 *East*, 325. *Bott*, *Cont.* 137. 1 *Nol. P. L.* 383. The pauper was hired for four years, '*with liberty to leave a week every year, to see his friends.*'—*Per* Lord *Ellenborough* C. J. Here is a hiring for a period of four years, with an exception of a week in every year, that is to be taken distributively, a week out of each year. Therefore the master had no dominion over the servant for any one entire year, but only for one year *minus* one week in that year, and so on.

Rex v. *Westerleigh*, *T.* 14 *Geo.* 3. *Burr. S. C.* 753. 2 *Bott*, 215. 1 *Nol. P. L.* 383. 396. The pauper, *William Ayliff*, was hired for a year to *Anne Tyler* of *Old Sodbury*, to serve her for a year, but at the same time he told her that he was in the militia, and he might be absent about a month in the year to attend on that duty, but that he would pay a man to serve in his place, or else he would make her an allowance out of his wages for the time he should be absent. He entered accordingly on his said service with the said *Anne Tyler*, and served her till the month of *May* following, and then joined and attended the militia for thirty days, and afterwards returned to his said service with *Anne Tyler*, and continued therein until the end of his year, and then made her an abatement of 8*s.* out of his wages for the time he was absent out of his service. Lord *Mansfield* was not in court. Mr. J. *Aston* thought this case reconcileable to the cases of *Rex* v. *Beccles*, and *Rex* v. *Goodnestone* (*post*), and distinguishable from that of *Bishop's Hatfield*, which had been cited in argument: That absence for a particular time, with the master's leave, not agreed for at the time of hiring, doth not dissolve the contract. But in the case of *Bishop's Hatfield*, the *original hiring* was with liberty to let himself for the harvest month to any other person. This made a clear chasm in the original contract. It was plainly a hiring for less than a year. In the present case a man is hired for a year, to serve for a year, but mentions an event that might happen of his being called out to attend his militia duty; and told his mistress, that if it should so happen, he would either pay a man to serve in his place, or make her an allowance out of his wages. This is not a chasm in the contract, but a dispensation with the present service. Mr. J. *Willes* premised, that settlements ought to be favoured; and that militia-men ought not to have any additional hardship put upon them if it can be avoided. However, he could not help thinking, that the case of *Bishop's Hatfield* was very like the present case, and

But, hiring for a year with liberty to be absent a month in the militia, if requisite, gains a settlement.

Stipulations for absence.

R. v. Westerleigh.

that the absence was as much part of the contract in the one case as in the other. If the mistress did not expressly agree to it, she at least acquiesced. Indeed, in the present case the servant agreed either to find a substitute, or to abate out of his wages. Now this was at the election of the mistress: And she dispensed with his absence, upon an abatement out of his wages. Upon this distinction, and this only, he would, for the advancement of settlements, distinguish this case from that of *Bishop's Hatfield*. Mr. J. *Ashhurst* said, that in a case which might affect a vast number of militia men, he was for leaning in favour of their gaining settlements; and he thought this case to be distinguishable from that of *Bishop's Hatfield*. That case was certainly no more than a hiring for 11 months. But here was an alternative; it might happen, that the servant should not be called out. Therefore he concurred in supporting the settlement.

So where one hires himself for a year at so much per week, and agrees to serve a month at the end of the year, since he should be absent in the militia for a month of the year, a settlement may be gained.

And in *Rex* v. *Winchcomb*, *E.* 20 *Geo.* 3. *Doug.* 391. *Cald.* 94. 2 *Bott*, 221. 1 *Nol. P. L.* 383. The pauper hired himself in the parish of *Chipping Norton* five weeks before *Michaelmas*, for a year: and at the time of the hiring, it was agreed between him and his master, that his wages should be paid weekly, at 8*s.* a-week, and that being a ballotted man in the militia, he should be absent for the month, and in lieu of that month should serve another month at the end of the year. He was accordingly absent thirty days in the militia, and then returned to his service, but he only continued three weeks of the month which was agreed to be served in lieu of his absence in the militia, leaving his master a fortnight before *Michaelmas*. He expressly swore, that he did not serve his master a year by one week. It was objected, that this was no hiring for a year, nor any service for a year, at *Chipping Norton*.—By Ld. *Mansfield* C. J. and the rest of the Court: There is in this case a hiring for a year: and there is also a service for a year, if it were not for the month's absence in the militia. *A service must be for a continuation, without interruption, or adding together broken pieces to make up the year.* But here, the agreement, as to the absence for a month in the militia, was only what would have been implied, and what the master must have consented to. The year was completed five weeks before *Michaelmas*, and the additional month agreed for was only in the nature of a compensation for the want of the pauper's service while absent in the militia, and equivalent to a deduction of so much wages. This case, if not the same, is very like that of *Rex* v. *Westerleigh*. The Court ought to lean in favour of settlements; and the bad consequences would be very extensive, if we were to determine that a man shall lose his settlement by serving his country in the militia. We are all of opinion that this is a good settlement at *Chipping Norton*.

A stipulation by an East India pensioner to have two days in each half-year to go and receive his pay, defeats his settlement.

Rex v. *Over*, *T.* 41 *Geo.* 3. 1 *East*, 599. 2 *Bott*, 229. 1 *Nol. P. L.* 382, 383. The pauper let himself for a year, but, being an *East India* pensioner, he was to have two days in each half-year to himself, to go to receive his pension.—Ld. *Kenyon* C. J. held that the pauper gained no settlement by this hiring. That the case of the militia-man went altogether upon the ground, that the leave of absence stipulated for, was no other than

Stipulations for absence.

R. v. Over.

what the law would have compelled without any such stipulation. (*See* p. 374.) It was part of the public service; no conclusion, therefore, could be drawn from thence in support of this settlement. That here was an express reservation of four days in the year, during which the pauper was not to be under the controul of the master.

Hiring for a year at 13s. 6d. per week, and to be at liberty to be absent during the sheep-shearing season, but to find a fit man, at his *own expence*, to do his work during his absence, *but his own wages to go on during the whole time*, will not gain a settlement.

Rex v. *Arlington*, *T.* 53 *Geo.* 3. 1 *M.* & *S.* 622. *Bott*, *Cont.* 141. 1 *Nol. P. L.* 384. 394. Removal from *Arlington* to *Wilmington*; order quashed by the sessions, subject, &c. The pauper was hired for a year from *Michaelmas*, 1809, to *Michaelmas*, 1810, as shepherd to *J. King* of *Wilmington*, to receive 13*s.* 6*d.* *per* week, wages, and an allowance for a hog, and to be at liberty to be absent during the sheep-shearing season, but to find a fit man at his own expense, to do his work during the time of his absence, but his own wages of 13*s.* 6*d.* a-week were to go on during the whole time. The pauper served the year in *Wilmington* accordingly, was absent during the sheep-shearing season, and employed and paid a person to tend the flock, but occasionally returned during that period, and assisted in the management of it, especially on *Sundays*, and from time to time gave directions to the person employed by him. After argument, Ld. *Ellenborough* C. J. said, It has never been determined that a contract for service by deputy is service by himself. The distinction taken in all the cases is, whether the liberty of absence forms a part of the original contract so as to be an exception out of it, or whether it be by permission of the master during the continuance of the contract. If this hiring could be deemed to confer a settlement, the consequence would be, that a person might gain as many settlements as there are forty days in one year. He might hire himself to *A.*, with liberty to be absent with *B.* and *C.*, and so on, and if he could get forty days' service with each, he might accumulate eight or nine settlements in the course of a year. Such a consequence would be preposterous. What does this hiring really mean? A hiring for a year is where the servant is to be under the controul and command of his master for the whole year; but here the pauper was not to be so, but was to be at liberty to find a substitute for the sheep-shearing season. The case will scarcely bear a serious argument. It has been laid down in *Rex* v. *Empingham*, *ante*, p. 374. and other cases, that if it be an exception out of the original contract at the time of making it, no settlement can be gained under it; here it was an exception, and therefore no settlement. Order of sessions confirmed.

Hiring for a year to go away a month at harvest and to make up the time after Michaelmas.

Rex v. *Turvey*, *E.* 59 *Geo.* 3. 2 *B.* & *A.* 520. 1 *Nol. P. L.* 353, 354. The pauper was hired for a year from *Old Michaelmas* to go away a month at harvest, and make the time after *Michaelmas*. He went away for a month at harvest, and continued in his master's service a month after *Michaelmas.*—*Abbott* C. J. said, It has been decided in this Court, that where there has been a hiring for a year, and a service for a year, although that service has not been under one hiring, the servant gains a settlement. But I hope no rash genius will ever carry the matter any further. The only question here is, what is the meaning of the word "year" in this statute. I apprehend the legislature clearly to have meant, one entire consecutive period of three hundred and sixty-five days. Unless that were so, we might have to deduce a settlement of a pauper

Meaning of the word "year."

R. v. Turvey.

by taking different unconnected days and weeks from a long series of years, so as to make up in the whole a year's service. And so it would happen that a hiring for the month of *August*, for this and eleven successive years, would amount to a hiring for one year. I have often lamented, that in so many instances, the Court has departed from the plain and literal construction of the statutes relating to the settlement of the poor. — The Court of K. B. held that this was not a hiring for a year, and no settlement was gained thereby.

Rex v. *Edgmond*, *M.* 60 *Geo.*3. 3 *B.* & *A.* 107. 1 *Nol. P. L.* 380. A pauper in consideration of weekly wages agreed to serve *T. S.* a bricklayer, for three years; but, in case he should neglect his master's business, or lose any time on his own account in any one week, during the first year, then that *T. S.* should deduct from his weekly wages in proportion; and *T. S.* agreed that he would pay wages in proportion to any over-work which the pauper might do in any one week. There were similar stipulations for the second and third years of the term; and it was also agreed that in case they could not work through severity of weather in any one year, in the winter time, then that *T. S.* should pay no wages during that time, but should permit the pauper to employ himself in any other business whatever. The Court of K. B. held, that these were express exceptions in the contract, and that the pauper, by serving a year under it, did not gain a settlement. — *Bayley* J. said, The case of *Rex* v. *Martham*, 1 *East*, 239. is distinguishable from the present, because there was no such express authority as this to contract a relation of service with another master; besides, that there was not a general contract of service, but to serve in the particular trade of a bricklayer.

The pauper was hired to serve as a servant in husbandry from Michaelmas 1821, to Michaelmas, 1822, at weekly wages; and if he and his master could not agree for the harvest, he was to harvest for himself. Previously to the harvest, the master offered the pauper 5l. for the harvest, which he accepted, and continued in the service the whole year: Held, that this was an *exceptive*, and not a *conditional* hiring, and that no settlement was gained.

Rex v. *Althorne*, *T.* 4 *Geo.* 4. 2 *B.* & *C.* 112. 1 *Nol. P. L.* 375. On an appeal against an order of two justices, for the removal of *John Wiggins* and *Elizabeth* his wife, from the parish of *Mayland* to the parish of *Althorne*, both in the county of *Essex*, the sessions confirmed the order, subject to the opinion of the Court of K. B. upon the following Case:—" The pauper, who was settled in *Althorne*, at *Michaelmas*, 1821, agreed with Mr. *Croil*, a farmer in the parish of *Mayland*, to live with him as his servant in husbandry from that *Michaelmas* till the *Michaelmas* following, at 10s. per week for the winter half-year, and 11s. per week for the summer; and if he and his master could not agree for the harvest month, the pauper was to harvest for himself where he pleased." Previous to the harvest, the master offered the pauper 5*l.* for the harvest, which he agreed to take; and accordingly continued in his master's service during the whole year." *Per Curiam*. The service would not have continued for the whole year, unless after the original hiring a new bargain had been made for the harvest month. There was not then any one hiring for a year; and therefore, although the pauper actually served a year, it was not such a service as confers a settlement. — Order confirmed.

Stipulations, Working-hours.

Where the hir-

Rex v. *Ozelworth*, *T.* 24 & 25 *Geo.* 2. *Burr. S. C.* 302. 2 *Bott*, 306. *William Hewett*, settled in *Ozelworth*, agreed with *Thomas Palsor* of *Wotton Under-Edge*, cloth-worker, to serve

him in the said business for three years, at so much a week. He was to work twelve hours in a day; and if more, was to have a penny for each hour over. Sixpence a week was to be retained as a deposit; which was to be repaid to *Hewett* if he performed the agreement, or if *Palsor* should discharge him before the end of the said term. And it was understood between them that *Palsor* might turn *Hewett* out of his service at any time during the term, paying him the sixpences detained. *Hewett* worked under the agreement for about six months; and then, being ill, absented himself about three months; and then returned, and was received by *Palsor*, and continued to work for him under the said agreement, till the time of his being removed by the order, being about three-quarters of a year after his return. During the whole time, *Hewett* lodged in the parish of *Wotton Under-Edge*, but not in *Palsor*'s house.—By the Court: This is a settlement at *Wotton Under-Edge*. Here is an actual hiring for three years, and a service under it for one year and a quarter. Besides the two justices removed him whilst he was actually in his master's service.

Stipulations for working-hours.

ing is to serve three years, to work twelve hours a day, and if more to have a certain sum per hour.

Rex v. *Macclesfield, E.* 31 *Geo.* 2. *Burr. S. C.* 458. 2 *Bott*, 211. 1 *Nol. P. L.* 377. *Joseph Bower*, a bastard child, born at *Sutton*, and maintained by the overseers of *Sutton*, was hired, with the consent and direction of his mother, (he being then about eight years of age,) to *Macclesfield*, to work at a silk-mill there, for the term of three years, at 6*d.* a-week for the first year, 9*d.* a-week for the second year, and 13*d.* a-week for the third. The master was not to find diet or lodging; and *the service was to be only eleven hours in the six working days;* and all the rest of the time, as well as on *Sundays*, he was to be at his own liberty and his own master. He continued three years in the said service; but within that time frequently absented himself from his work, sometimes for a whole day, or longer, at other times for several hours in the day; for all which defaults deductions were made out of his wages. He lodged the whole three years with his mother at *Macclesfield*, who received his wages; which not being sufficient to maintain him, the overseers of *Sutton* contributed 6*d.* a week during the whole time towards his maintenance. The question was, whether this was sufficient to gain a settlement at *Macclesfield*?—By Ld. *Mansfield* C. J. Here is no foundation to imagine that this can be a settlement on the ground of an apprenticeship. The only question is, whether it be a settlement as a hiring for a year and service for a year? The pauper was an infant of only eight years of age, at the time of the hiring. Therefore he was not bound by the agreement. Indeed he might have affirmed it; (for the contract of an infant is not absolutely void, but only voidable at his own election.) But the master could not oblige him to stand to it. Then as to the contract itself, it was only to serve eleven hours in the day of the six working days, but during all the rest of those days, and the whole *Sunday*, the servant was at his own disposal. It is in the nature of a contract from week to week; and it cannot in this case be construed to gain a settlement; and it is plain the parish of *Sutton* did not understand it in this light, having contributed to the child's maintenance during the whole three years. And the order adjudging it to be a settlement at *Macclesfield* was quashed.

Hiring to work for three years, eleven hours a day, the rest of his time and Sundays to be his own, is not a yearly hiring to give a settlement.

Stipulations for working-hours.

A hiring for seven years, to serve from six in the morning to seven in the evening of each day, except on Sundays, will not gain a settlement.

Rex v. *Kingswinford*, *E.* 31 *Geo.* 3. 4 *T. R.* 219. 2 *Bott*, 225. 1 *Nol. P. L.* 377, 378. On an appeal against an order of removal of *J. Lockwood* from *Kingswinford* to *Birmingham*, the sessions quashed the order, and stated the following Case: The pauper being settled at *Wakefield*, agreed with *W. Bullock* to serve him as an artificer in the art of a glass-grinder, or in any other art he should think proper to employ him in, for seven years; and he was not at any time during that time to work for, or to serve any other person, nor leave his service without the leave of his master, *but would continue and be in such service as aforesaid, from six o'clock in the morning till seven in the evening of each day, during the said term, including half an hour at breakfast, and one hour at dinner times,* (*except on* Sundays,) *if in proper health.* His master was to find him shop-room, and to pay him 3*s.* 6*d. per* week during the term, and to provide him meat, &c. He served *Bullock* two years at *Birmingham* under this agreement, and lodged and boarded at his house. He occasionally worked in the night time, and often went on errands for his master on *Sundays*, and never worked with anybody else during that time, nor thought himself at liberty so to do. — Ld. *Kenyon* C. J. said, that there was no real distinction between this case and *Rex* v. *Macclesfield*, for that the fair construction of this agreement was, that the pauper was to be his own master on *Sundays*, and on other days after he had served the thirteen hours, because he had only covenanted to serve those hours, and that the expression of one was the exclusion of the other. And he added, that it was *essential* in these cases *that the servant should be under the power and coercion of the master during the whole time.*

Hiring for five years to work twelve hours each day, will not gain a settlement.

Rex v. *North Nibley*, *M.* 33 *Geo.* 3. 5 *T.R.* 21. 2 *Bott*, 226. 1 *Nol. P. L.* 377. *J. Howell* was removed from *Wotton Under-Edge* to *North Nibley* in *Gloucestershire*. The sessions confirmed the order, subject to the opinion of the Court on the following case: The pauper was born at *North Nibley*, and was hired by Mr. *Smith* of *Wotton Under-Edge*, for five years, as a colt-shearman, *to work twelve hours each day.* He neither boarded nor lodged with his master, but served him the whole time, and received his wages, and lodged in *Wotton Under-Edge* all the time. The Court said, that the case of *Rex* v. *Kingswinford* had decided the present question, and that such hiring and service did not gain a settlement.

A hiring to serve five years as a shearman, and to work shearman's hours only, will not gain a settlement.

Rex v. *Buckland Denham*, *H.* 12 *Geo.* 3. *Burr. S. C.* 694. 2 *Bott*, 214. 1 *Nol. P. L.* 377. The pauper, at about seventeen years of age, was hired by his father, to a clothier of *Buckland Denham*, to serve him as a shearman for five years, and was *to work shearman's hours only* (which are uncertain): it was understood that he should be at his own liberty at all other times. The master was to teach him the business of a shearman. He was to have, for the first half-year, the weekly wages of 3*s.* and to be advanced 6*d.* weekly wages every succeeding half-year; and was to find himself in meat, drink, washing, and lodging. He served his master as a shearman during the said term, according to the said agreement; working the same hours as his master's other shearmen did. — By the Court: *This is not a good hiring for a year; because there is an excep-*

tion in it, that the pauper was to work shearman's hours only, and to be at his own liberty at all other times. But if the contract be an absolute contract for a year, the not working on *Sundays* or holidays, if it be the custom of the country not to work on those days, ought not to hinder the gaining of a settlement.

Stipulations for working-hours.

Rex v. *St. Agnes*, *T.* 10 *Geo.* 3. *Burr. S. C.* 671. 2 *Bott*, 214. 1 *Nol. P. L.* 404. The father of the pauper contracted with one Mr. *Nankivell* (the pauper being then fifteen or sixteen years of age) for the pauper to work at the said Mr. *Nankivell's* stamps, situate in the parish of *St. Agnes*, (which stamps are mills, wherein several labourers, men and boys, are employed in cleansing and manufacturing tin,) for one year, at the yearly wages of 5*l.* In pursuance of which contract the pauper served the said Mr. *Nankivell*, at his aforesaid stamps, for the said year, by working therein daily, except holidays and *Sundays*, according to the custom of tinners. And his father received his wages, as he had occasion for it. But during the said year, the said pauper did eat, drink, and lodge with his father in the said parish of *St. Agnes*, serving the said Mr. *Nankivell* at his stamps aforesaid, and in no other capacity, nor ever became a part of his master's family.—By the Court: This was an entire contract for a year, without any exception contained in it; and the service was according to the custom of the country. *The difference is where the exception is part of the contract, and where the contract is absolute: the question turns upon this distinction.* In the case of *Rex* v. *Macclesfield*, it was part of the original contract: here it is not so. And they were unanimous, that the pauper by this hiring and service gained a settlement.

Where the exception is part of the contract, no settlement can be gained; it is otherwise where the contract is absolute and the exceptions only implied.
Hiring to work at stamp mills.

Rex v. *Horwick*, *H.* 49 *Geo.* 3. 10 *East*, 489. *Bott, Cont.* 137. 1 *Nol. P. L.* 382. 384. The pauper was hired as a bleacher and crofter for a year at 12*s.* a-week; and served the year. The custom is for each bleacher to be directed by his master to get up a certain number of pieces a-week, calculating at so many pieces a day for six days; there is no stint as to hours, and if the bleacher finish his work in less than the time appointed, the rest of the time is his own to do as he pleases; it was the custom of that house never to interfere with the workmen on *Sundays*, and it was contended that this was in effect an exception in the contract of *Sundays*. But Lord *Ellenborough* C. J. said that the master in this case had as much right to the service of the pauper for the whole year as the law would allow of. That here was a clear distinction between the present case and those of *Rex* v. *Macclesfield* (*ante*, 379.), *Rex* v. *Kingswinford* (*ante*, 380.), and *Rex* v. *N. Nibley* (*ante*, 380.) That here was an express hiring for a year, and no express exception of any part of the year, and that *implied exceptions in the times of service by the custom of the country, have been held not to break in upon general contracts of hiring for the year.*

Hiring to work as a bleacher.
Implied exceptions by the custom of the country, will not defeat the settlement.

Rex v. *All Saints, Worcester*, *H.* 58 *Geo.* 3. 1 *B. & A.* 322. 1 *Nol. P. L.* 376, 377. A clerk in a mercantile house, hired by the year, but serving only during the usual hours of business, thereby gains a settlement, although those hours did not, by the custom of the trade, ever occupy the whole day, and he went where he pleased, without asking his master's leave, when those hours were over. Ld. *Ellenborough* C. J. said, There is in every contract of hiring some

Merchant's clerk hired for a year, and serving only during the usual hours of business.

R. v. All Saints, Worcester.

implied exception of hours for relaxation, food, and rest; I cannot at least suggest to myself any contract in which such exceptions do not exist. The master here has a right to the service of the pauper at all times, but he does not require his services at any other hours than those mentioned: there is not any exception in the contract. The hiring then being general, and there being no exception but such as are necessarily implied in every contract, I think that the pauper by serving under it for a year, gained a settlement. *Bayley* J. said, the distinction between the two classes relative to this subject is, that in the one the exception to the service is expressed in the contract, and in the other it is left by the custom of the particular trade to be raised by implication. This case seems to me to range itself under the latter class; and therefore I think the pauper gained a settlement by this hiring and service.

A pauper was by indenture hired for a year as a driver in a colliery, at the wages of 1s. 10d. for a good day's work, not exceeding fourteen hours, and 2d. a day more when that time was exceeded; and he was to forfeit 10s. 6d. for every act of disobedience, and 2s. 6d. per day for lying idle (to be deducted out of his wages). There was a proviso, that nothing in the indenture should be construed to oust the jurisdiction of the justices, or to prevent either master or servant from applying to them in case of disputes; and a covenant, that in case the master about Christmas should wish to repair any engine, &c. belonging to the colliery, he might stop the workings for any period not

Rex v. *Inhab. of Byker*, *T.* 4 *Geo.* 4. 2 *B.* & *C.* 114. 1 *Nol. P. L.* 379. Upon an appeal against an order of two justices for the county of *Durham*, for the removal of *William Gray* and *Mary* his wife, from the township of *Haughton-le-Spring*, in the said county of *Durham*, to the township of *Byker*, in the county of *Northumberland*, the court of quarter sessions at *Durham* confirmed the order, subject to the opinion of the court of K. B. upon the following Case:—By an indenture, bearing date the 23d day of *October*, 1809, and purporting to be made between *James Potts* of *Byker*, in *Northumberland*, of the one part, and the several persons whose names or marks were thereunto subscribed, of the other part, the said *James Potts* did hire and retain the several other parties thereto, and they did hire and bind themselves as workmen or servants, to be employed in a certain colliery for the term of a whole year, from the 21st day of *January*, 1810, and to serve *J. P.* in the colliery for certain hire or wages in the indenture mentioned; and *J. P.* did covenant to pay to every driver, for every good and sufficient day's work, not exceeding fourteen hours, in single-shaft pits (and 2*d.* per day when that time was exceeded) 1*s.* 10*d.* And the several persons hired and retained by the indenture did covenant with *J. P.* that each of them would, in their several stations, diligently perform and obey his orders and directions as to the manner of working the colliery, and work the colliery fairly and regularly, and as therein further expressed; or in default thereof, should forfeit and lose (to be retained out of their wages) the sum of 10*s.* 6*d.* for every act of disobedience; and also the sum of 2*s.* 6*d.* per day for lying idle upon each hewer, deputy-craneman, on-setter, sinker, driver, or off-handman, to be deducted as aforesaid; and for every working day which they or any of them so hired and bound as aforesaid should absent themselves from their employment, or should neglect or refuse to fulfil and execute the whole of the business of an usual day's work, unless prevented by sickness or some other unavoidable cause, the defaulters should forfeit and lose (to be retained as aforesaid) the sum of 2*s.* 6*d.* for every such default, refusal, or neglect; all which said forfeitures and penalties should be deducted and retained out of the wages or earnings of each offender at the first pay-day next after the offence should be committed. And in the said indenture was contained a proviso, that the indenture should not, nor should any covenant or clause

therein contained, be construed to extend to oust or exclude any justices of the peace from any jurisdiction or cognizance which the statute law of this kingdom hath given to such justices over masters and servants; but, on the contrary, that each of the said several parties thereto should be at full liberty, notwithstanding any thing therein contained, upon any breach of any of the before-mentioned covenants, to call for and require the aid and assistance of any justice or justices, to compel the performance, or punish any breach of such covenants, as far as by law they could or might if the said indenture had not been made. And it was further covenanted and agreed, that in case the said *J. P.* should think it necessary, at or about *Christmas*, 1822, to repair, alter, or amend any engines or machines of or belonging to the said colliery, or to remove or prevent any obstructions or hindrance which might have happened to the same, or to do any other thing which he the said *J. P.*, his executors, &c. should think needful to be done in the said colliery, or the working of the same, that then it should be lawful for him to stop the workings at all or any of the pits of the colliery for any length of time not exceeding in the whole the space of seven days, without paying or allowing any wages or sums of money to any of the several parties who should thereby be prevented from doing their daily work, save and except such of them as should be employed by him in any other work in and about the colliery, or otherwise, who should be paid or allowed reasonable wages for such his or their other work. This indenture was executed by *James Potts* and by *William Gray*, the pauper, together with a great number of other workmen, upon the day it bears date. *William Gray* was retained and hired by the said indenture as a driver. He was at that time under age, unmarried, and without any child. At the time when the indenture was executed, *William Gray* was in the service of *J. Potts*, at the colliery, and he continued in his service as a driver for a whole year, from the 21st of *January*, 1810, till the 21st of *January*, 1811, and resided during all that year in the township of *Byker*. There was no evidence, either that the pauper, *William Gray*, had or had not incurred any penalty or forfeiture during his year's service under the indenture, or that any deduction had or had not been made from his wages. *E. Alderson*, in support of the order of sessions. The pauper acquired a settlement in *Byker*. The question here is very different from *Rex* v. *Gateshead*. (*a*) In that case there were several clear exceptions

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exceeding seven days, without paying any wages to the pauper, unless employed in other work: Held, that this was a conditional, and not an exceptive contract, and that the pauper gained a settlement by serving under it for the whole year.

(*a*) *Rex* v. *Gateshead*, *E. T.* 2 *Geo.* 4. 2 *B.* & *C.* 117. *n.* (*a*) 1 *Nol. P. L.* 380, 381. The pauper was, together with many other persons, hired to work in a colliery from the 5th of *April*, 1813, to the 5th of *April*, 1814. Amongst other things, it was stipulated that each man should on each *working day* do such a quantity of work as should be deemed equal to a full day's work, and should not leave the pit until that quantity was completed, or in default thereof should forfeit 2*s.* 6*d.* The master stipulated to find work for the men during the whole year, and to forfeit 2*s.* 6*d.* for every day that he should oblige them to lie idle, except at the *Christmas* holidays, which were not to exceed ten days. There was also a proviso, that nothing in the agreement should oust the jurisdiction of the magistrates. The pauper worked for the whole year, including the holidays, except on certain *Saturdays* called *pay Saturdays*, when the wages were paid, and the men did no work. The justices at sessions held that this hiring and service did not confer a settlement. — *Williams*, in support of the order of sessions, re-

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out of the contract. Here, there is nothing of that kind. The service is not limited to any stated number of hours in each day. The question must be decided by this principle, that the exception must be in the contract itself. It will not be an exception if by the custom of the country, or by the custom of a particular trade, or by special leave of the master, the servant works during certain hours only. (a) The clerk in a mercantile house attends during certain hours only; but if he were hired for a year, the hours of rest would not be an exception out of the contract. There are certain implied exceptions in every contract. *Rex* v. *All Saints, Worcester, ante*, 381. Here, the number of hours during which the service was to be performed, was merely introduced as a mode of calculating the amount of the wages. The hiring was general, although the mode of calculating the wages was special; and wages were not to be paid for fourteen hours' service only; if the service were longer, the pauper was to have higher wages. So, also, the retention of part of the wages in case of negligence, was merely for the purpose of enforcing obedience. And besides the forfeiture for absence, there is a

R. v. Gateshead. lied upon *Rex* v. *Edgmond*, 3 *B. & A.* 107., and contended that the agreement between the pauper and his master was merely for a certain quantity of work. — *Tindal*, contrà, referred to the proviso at the end of the agreement to shew that the relation of master and servant existed throughout the year. — *Per Curiam.* That would not authorise the magistrates to interfere contrary to the express contract of the parties. The case is not distinguishable in principle from *Rex* v. *North Nibley* and *Rex* v. *Edgmond.* The pauper has not stipulated to be under the control of the master for the whole year. Order of sessions confirmed.

R. v. Polesworth. *Rex* v. *Polesworth*, *H.* 5 *Geo.* 4. *MSS. B. & C.* 1 *Nol. P. L.* 381. The pauper agreed with his uncle *W. B.* to serve him for three years at 1*s.* a day, when he had work for him to do, and when he had not he was not to be paid: and *B.* told him that he should not have work for him all the year round, particularly in winter, and when he had not he might get work from other people. After the agreement the pauper worked in the collieries till spring, then with his uncle under the agreement nine months, when his uncle telling him he had no work for him, he worked several weeks as a labourer with Mr. *B.* when he returned and worked with his uncle above nine months and then left him. — He neither received wages from his uncle while he was absent, nor accounted with him for such as he received from others during that time. In support of the settlement and order of sessions *Rex* v. *Martham*, 1 *East*, 239., was cited, but it was determined to be an exceptive hiring, being only so much of the year as the master had work for him. He had the controul over his servant only while he had work for him, the servant being at liberty to get work elsewhere when he had none.

R. v. Lydd. *Rex* v. *Lydd*, *H.* 5 *Geo.* 4. *MSS. B. & C.* 1 *Nol. P. L.* 381. An unmarried man hired himself for three years to *F.* as a looker, his duty being to superintend the flocks and fences of his employer. Nothing was said at the hiring by *F.* about his being at liberty to hire himself or to work with any other master during the three years, but *F.* said he did not think he should have full employment for the pauper, but he would employ him as far as he could. He was not to do other work except that of a looker for *F.* without receiving *extra* wages. During his service with *F.* he did other work for him for which he was paid upon new and separate bargains; he worked for nobody but *F.* until after the first year, when he also hired himself as a looker to *R.* for a year at 14*l.*: but while working with *R.* and other people, he invariably quitted such work upon a known signal, and returned to attend his duty as looker to *F.* for which he was originally hired. This was not a hiring and service for a year. From the nature of the employment, it was not likely to fill up the pauper's whole time and he was to be at liberty to employ himself during the residue as he pleased.

(a) See *Rex* v. *St. Agnes*, *Burr. S. C.* 671. *Rex* v. *Birmingham*, 1 *Doug.* 333.

special provision, that the jurisdiction of the magistrates shall not be ousted; and they might compel the party to serve. That does not restrain the original unqualified hiring for a whole year. The stipulation as to repairing the engine applies to the master alone, and does not give the servant any power to go away. The master might employ him elsewhere. That, therefore, was not an exceptive hiring, and the service under it was sufficient to confer a settlement. *Rex* v. *Edgmond* (3 *B.* & *A.* 107.) is distinguishable; for in that case there was a clear stipulation for absence, and leave to serve any other master during severe frost. That, too, was considered as a contract for a certain quantity of work per day. Here, the pauper was compellable to serve for the whole day. There was no liberty for the pauper to go into another service during the repair of the engine; and if the work at the pit was discontinued for more than a week, the master was to pay wages. *Tindal*, contrà. This was an exceptive contract. The agreement was, that the pauper should receive a certain sum for a day's work not exceeding fourteen hours. No magistrate could have compelled the pauper to return to work after the expiration of the fourteen hours. Then, according to *Rex* v. *North Nibley*, (5 *T. R.* 21.) that did not confer a settlement. It is no answer to say that the hiring was originally for a year or years; for that was the case in *Rex* v. *Edgmond*. In that case *Abbott* C. J. says, "I do not see what remedy the master could have had, supposing the pauper to have refused to work after the usual hours." The stipulation in that case for absence during frost, resembles the provision here for the repair of the engine. In this case, it must be admitted, the pauper has not any express liberty to work elsewhere; but if the master chose to turn his men off for a time, they would not be bound to remain idle, but might enter into another service; the cases, therefore, are not to be distinguished. *Rex* v. *Gateshead* is also in point for the appellants. In that case there were certain forfeitures for absence, and at the end of the agreement a proviso, that nothing therein contained should have relation to the jurisdiction of magistrates in cases of disputes between master and servant. And it was observed by the Court: "The last clause cannot controul the express stipulations previously agreed to. That of the servant's leaving his work is contemplated by the parties themselves, who agree, that for any default he shall pay certain fines or penalties. This case is not to be distinguished from *Rex* v. *Edgmond*." Neither is the present case distinguishable; and if those cases were well decided, the order of sessions must be quashed. *Cur. adv. vult.* The judgment of the Court was, on a subsequent day during the sittings, delivered by *Bayley* J. The question in this case was, whether the hiring were conditional or exceptive. Many cases of this description are to be found in the books, between which the distinction is rather subtle, and at first sight not easily discovered. Adverting to them all, the proper distinction appears to be this; if the bargain be originally made for an *entire* year, and terms are introduced applicable to a continuance of the relation of master and servant during the whole year, but there is also a provision, that in a given event it shall be competent to the parties to put an end to, or suspend the service for a part of the year, still a settlement is gained if the service is actually per-

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Distinction.

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formed for a whole year, and neither party avails himself of the condition. A conditional hiring is, for this purpose, the same as an absolute hiring, unless the condition is acted upon. An exceptive hiring is one by which the relation of master and servant will not subsist for the whole year, unless some further arrangement is entered into; and if by the bargain days or hours are excluded from the service, that is an exceptive hiring. It has been contended that here both days and hours are excluded; but we are of a different opinion. The pauper was hired by indenture, and it was agreed that the master should pay for every good day's work not exceeding fourteen hours, (and 2*d.* per day when that time was exceeded,) 1*s.* 10*d.* It was said that the pauper was entitled to absent himself at the expiration of fourteen hours, and that the master could not compel him to work any longer. We are of opinion, that the time was only mentioned as the measure of the wages; that the contract does not impose any limit upon what might reasonably be required by the master; and that the relation of master and servant continued during the whole twenty-four hours. Upon the forfeitures also, we think that the pauper might not, upon payment of them, be absent if he thought fit, but that they were inserted to enforce regular attendance; and this view of it is confirmed by the clause stipulating that nothing in the contract shall be construed to abridge the power of the magistrates. Another clause has been insisted upon for the appellants; that relating to the repair of the engine. If that was an exception, this was a contract for a year, minus seven days. But we think it a contract for a year, with power to the master to stop the work if he thought fit. Had he done so, the question would have been different; but that is not found. This, therefore, was a bargain for a year, with liberty to suspend the service, which constitutes a conditional and not an exceptive hiring. This distinction between *conditions* and *exceptions* is consistent with all the decisions. In the cases where a servant having liberty to be absent, has been held not entitled to a settlement, it will be found, either that the servant availed himself of the liberty, or that the time was necessarily excepted out of the original contract. This being a conditional hiring, and the condition not having been acted upon, the pauper gained a settlement in *Byker*. And the order of sessions was therefore right. — Order confirmed. (*a*)

(h) Of weekly and monthly Wages and Notice.

Contract for wages at 6s. a week, summer

Rex v. *Dedham, M.* 10 *Geo.* 3. *Burr. S. C.* 653. 2 *Bott*, 198. 1 *Nol. P. L.* 367. 369. 374. In *April*, 1767, the pauper, *Samuel*

(*a*) In *Rex* v. *Bishops-Hatfield*, 2 *Bott*, 211., the pauper was hired for a year, with liberty to let himself for the harvest month to any other person. In *Rex* v. *Empingham*, 2 *Bott.* 217., the hiring was for a year, with liberty to be absent eleven days during the sheep-shearing season. In *Rex* v. *Arlington*, 1 *M. & S.* 622., the hiring was for a year, with liberty to be absent during the sheep-shearing season. In *Rex* v. *Turvey*, 2 *B. & A.* 520., the hiring was for a year from *Michaelmas*, to go away a month at harvest, and make up the time after *Michaelmas*. In each of these cases the pauper did absent himself according to the liberty reserved in the original contract; and it was held that no settlement

Bolton, was hired to *John Mason* of *Dedham*, to serve him in the business of a plumber and glazier, at the wages of 6*s*. *a week, board, lodging, and washing, summer and winter.* He served under that agreement for eleven months, when his master having taken an apprentice, informed him that he must lodge out of his house. Upon which the pauper demanded 6*d*. a week more, alleging that he would otherwise quit the service on account of his master's having withdrawn from the original agreement. He continued to receive the additional 6*d*. a week till the *September* following. And the pauper by the aforesaid hiring apprehended he was bound to stay with his master a year. The sessions thought a settlement was gained thereby. Ld. *Mansfield* C. J. All the cases require a hiring for a year, and there must be a *reciprocal obligation on both parties*. I see nothing here to make it a hiring for a year.—It was a hiring at so much per week: when the master could not lodge the servant any longer, they came to a new agreement for an additional 6*d*. *a week*. The servant alleged that he would quit the service unless the master would comply with his demand. And to prevent his doing so, the master complied, and paid him 6*d*. a week more. *Yates* J. There must be a hiring for a year either in law or *express words*. These words do *not* express it. The demand made by the servant destroys the presumption; so that neither of them seems at that time to have thought the contract originally made between them was binding for a year. *Aston* J. Though a general hiring is a hiring for a year, yet there must be an obligation upon the servant for a year. But nothing here infers such an obligation. 'Six shillings a week summer and winter,' only imports that the wages should continue always the same, and not be varied according to the seasons. The master's complying with the demand shews how the contract was understood by them both.

Weekly wages.

and winter, not a hiring for a year, but a weekly hiring.

See *Rex* v. *Overnorton*, *post*, p. 398, for the construction of the word *year*.

Rex v. *Newton Toney*, *E.* 28 *Geo.* 3. 2 *T.R.* 453. 2 *Bott*, 223.

A hiring at so much per week

was gained by such hiring and service. There are two cases, *Rex* v. *Westerleigh*, *Burr. S. C.* 753., and *Rex* v. *Winchcomb*, 1 *Doug.* 391., which appear to be at variance with those decisions. In each of these two cases the pauper was hired for a year, with liberty to be absent on duty as a militia man for a month, and he accordingly was absent; yet it was held that the hiring and service conferred a settlement. In *Rex* v. *Over*, 1 *East*, 599., Ld. *Kenyon* says, that the ground of those decisions was, that the leave of absence stipulated for was no other than what the law would have compelled without stipulation. In several other cases, it has been held that implied exceptions will not prevent the gaining of a settlement, but that if they are expressed in the contract they will have that effect. *Rex* v. *Macclesfield*, *Burr. S. C.* 458. *Rex* v. *All Saints*, *Worcester*, 1 *B. & A.* 322. And there appears to be this distinction between them, that notwithstanding the implied exceptions, the relation of master and servant continues during the whole year; whereas that relation has been considered at an end during the excepted periods stipulated for in the contract. *Rex* v. *Wrington*, *Burr. S.C.* 280. But in the cases of the militia men, it seems that the relation of master and servant must at all events have been suspended for the time during which they were out on duty. It seems difficult, therefore, to understand on what principle those cases are sustainable: and see the observations made by the court in *Rex* v. *Beaulieu*, 3 *M. & S.* 229.

Weekly wages.

is not a general hiring.

1 *Nol. P. L.* 367. *William Slater* and his wife and children were removed from *Harbridge* to *Newton Toney*. The sessions confirmed the order, and stated the following Case: — That *Slater* went into the parish of *Newton Toney*, to one *Postans*, a publican there, who had before employed him three times to go into *Shropshire* with some hounds; and on his return from the last journey he agreed to live with *Postans* as ostler, at 4*s.* 6*d.* *per* week, and continued with him as ostler for one year and a half, and then went away. Before his departure, on demanding his wages, *Postans* alleged, that as he had received vails, 4*s.* 6*d.* a week would be too much; whereupon he agreed to accept after the rate of 10*l.* a-year, in lieu of 4*s.* 6*d.* *per* week. He then left his service, and lived elsewhere for five or six months, when he returned to *Newton Toney*, and agreed with *Postans* to serve him again as his ostler, as he had done before, at 4*s.* *per* week, which was about 10*l.* a-year, and which he received when he asked for it; under the latter agreement he lived one year and a half, but thought himself as a weekly servant, and at liberty to leave his service at any time. — *Ashhurst* J. The case of *Rex* v. *Dedham* (*ante*, 386.) is much stronger than this. It is impossible to distinguish the two cases upon principle; here the pauper 'hired himself as an ostler at 4*s.* 6*d.* *per* week,' but 'that cannot be considered as a general hiring;' and if either party had chosen to dissolve the contract before the end of the year no action could have been maintained by the other. — *Buller* J. This case is not so strong as that of *Rex* v. *Dedham*, for there the expression *summer* and *winter* shewed that the party had it in contemplation to continue a year in the service. Here the hiring is merely at so much *per* week: now "if there be any thing in the contract to shew that the hiring was intended to be for a year, there a reservation of weekly wages will not controul that hiring; but if the payment of weekly wages be the only circumstance from which the duration of the contract is to be collected, it must be taken to be only a weekly hiring," and this hiring is of that kind. — *Grose* J. Considering the situation of the pauper, and what passed at the time of entering into this contract, this appears not to be a hiring for a year: the pauper was hired in the character of an ostler at 4*s.* 6*d.* *per* week; now that circumstance alone shews that he was not likely to continue a year. Besides that, it appears that he actually left his service in the middle of the year, which satisfies me that it was not intended by the parties to be a hiring for a year. R. A.

But if there be any thing in the contract to shew that the hiring was intended to be for a year, there a reservation of weekly wages will not control that hiring.

Rex v. *Odiham*, *T.* 28 *Geo.* 3. 2 *T. R.* 622. 2 *Bott*, 224. *n.* 1 *Nol. P. L.* 368. The pauper went to live with one *Rhodes* of *St. Mary, Lambeth*, livery-stable-keeper, and post-chaise-letter, as under ostler, at 9*s.* *per* week, without fixing any time for the expiration of such service. Some time after he had been there a post-boy went away, and the pauper was by his master turned over to take his place at 3*s.* *per* week, and the money he could get from the persons he drove. He remained in such service upwards of two years, and more than one in the last employment as post-boy; during the whole time he found himself victuals, and lodged in a loft belonging to his master in the yard. Some time after he left the said service he returned to it again, when

Rhodes told him he might go to work, and then remained one year under that agreement. Some time after he left the service, he returned to it a third time, in or about *February*, as an odd man, without wages, and continued under this last agreement till three weeks after *Christmas*: when he first went, he saw and had some conversation with the head-ostler, and was some days about the yard before he entered into any service; he then asked his master (*Rhodes*) for his place, who told him he might have it. The pauper and his wife were removed from *Odiham* to *Lambeth*; which the sessions quashed on appeal. This case was given up, as having been determined in the (*above*) case of *Rex* v. *Newton Toney*. *Weekly wages.*

Rex v. *Pucklechurch*, *T.* 44 *Geo.* 3. 5 *East*, 382. 1 *Smith's Rep.* 552. 2 *Bott*, 233. 1 *Nol. P.L.* 369. The pauper after two previous hirings, each being for a less period than a year, again agreed to live with his master, the master finding him board and lodging, and paying him 2*s.* 6*d.* *per* week; no time was mentioned by either party. *Per* Lord *Ellenborough* C. J. "If nothing be said as to the term of the service, but that the servant shall have weekly pay, it must *primâ facie* be understood, that the parties intended a weekly hiring and service." But circumstances may shew a different intent. Here, in the first instance, the hiring was for a specific term of eight weeks; the second hiring was for a definite time short of a year. No time was mentioned at the third hiring, but it was a hiring at weekly wages. Then it falls within the cases of *Dedham*, *Bradninch*, and *Newton Toney*, where a hiring at weekly wages has been holden to be a weekly hiring. If an indefinite hiring be stated on a record, and nothing shewn to controul it, it will be deemed a hiring for a year: but that is in the absence of any circumstance from whence a different intent is to be collected. The other judges agreed. Afterwards Ld. *Ellenborough* C. J. said, "I hope it will be understood, that where nothing is said as to the hiring, and the wages are weekly, it must be considered as a weekly hiring."

Where nothing said as to term of service, but that the servant shall have weekly pay, it is only a weekly hiring.

Rex v. *Mitcham*, *E.* 50 *Geo.* 3. 12 *East*, 351. *Bott*, *Cont.* 138. 1 *Nol. P.L.* 368. Removal from *Mitcham*, in *Surrey*, to *Burghfield* (called in the order *Birchfield*), in *Berks*. The sessions quashed the order, and stated the following Case: — *Joseph Pendry*, being settled in *Burghfield*, was hired by *Graves*, the keeper of a toll-gate in the parish of *Egham*, *at 3s. a-week for as long time as his master and himself could agree*, to assist in collecting the tolls; and continued to serve under such hiring for more than a year, during which time he assisted *Graves* in collecting the tolls, and occasionally took care of a horse and some hounds. *Graves* had no horse at the time he so hired *Pendry*, but bought one afterwards. The hounds were kept in premises belonging to the toll-house; and *Pendry* during all that time resided in the toll-house. *Graves* did *not* hire him as he had before hired a brother of *Pendry*, with whom he expressly contracted as for a yearly servant. *Graves* paid *Pendry* as he wanted *money*, pounds at a time. *Pendry*, after the hiring, married the pauper *Rebecca*, by whom he had the three children named in the order of removal, and afterwards deserted his wife and children. — After argument, Ld. *Ellenborough* C. J. This case is nothing more

A hiring at so much a week for as long time as the master and servant could agree, is only a weekly hiring, under which no settlement can be gained.

Weekly wages.

than a hiring at so much a-week, which, where nothing else appears to the contrary, is a weekly hiring within the rule laid down in *Rex* v. *Newton Toney;* and it cannot alter the case by adding that which must necessarily have been understood, that the hiring was to continue as long as the master and servant agreed: that is, from week to week. *Order of sessions quashed.*

A servant in husbandry, hired to serve for the weekly wages of 4s. board, washing, and lodging, except in the harvest month, when his wages were to be increased to 10s. 6d. per week, and then again reduced to 4s., does not gain a settlement; for that is only a weekly hiring.

Rex v. *Dodderhill, M.* 55 *Geo.* 3. 3 *M.* & *S.* 243. 1 *Nol. P. L.* 370. Order of removal from that part of the parish of *Dodderhill* lying in the borough of *Wych*, otherwise *Droitwich*, to the parish of *St. Peter*, in the said borough, was discharged on appeal to the quarter sessions, subject to the opinion of the Court of K. B. on the following Case: *John Hill*, the pauper, being legally settled in *Wolverby*, hired himself as a servant in husbandry to one *Broad*, who occupied a farm in the parish of *St. Peter*, to serve him for the weekly wages of four shillings, board, washing, and lodging, except in the harvest month, when his wages were to be increased to 10*s.* 6*d. per* week, and then again to be reduced to 4*s.* At the time of the hiring nothing was said as to the length of time the pauper was to continue in the service of *Broad*. Under the above hiring the pauper served *Broad* eighteen months in *St. Peter's*, residing there, and receiving the 4*s. per* week, as agreed upon, except during the harvest month, when his wages were raised to 10*s.* 6*d.*, and at the end of that time fallen again to 4*s.* After argument, Ld. *Ellenborough* C. J. said, I take the rule of law to be, that if no particular time is expressed for the continuance of the service, or is reasonably to be implied, a hiring for a year is to be intended. But it has also been laid down, that a reservation of weekly wages imports a hiring by the week, unless the inference which arises from the reservation of weekly wages be repelled by other circumstances. Where there is a liberty to part at a month's notice, that imports that as there must be a month to determine the contract, the reservation of weekly wages is not to limit the duration of the contract, and therefore it becomes a hiring unlimited in duration, which the law terms a general hiring, or a hiring for a year. What is the case here? The hiring is at weekly wages, except in the harvest month, when the servant is to be paid according to a higher rate of weekly wages during that month; he is to be paid 10*s.* 6*d. per* week, the parties contemplating the possibility of the service continuing during the harvest month. If the exception had been "for the harvest month," instead of "in the harvest month," it might have afforded a more plausible argument that the contract was meant to endure at least for the period of a month; or if instead of 10*s.* 6*d.* a-week, it had been stipulated that the servant should receive two guineas for the month, that would have imported a consolidated month, and might have repelled, on the same principle as the month's notice, the inference arising from the reservation of weekly wages; but that is not the language of this contract. All that is stated here is the payment of weekly wages, which, according to the cases, controuls the duration of the contract. *Le Blanc* J. I am of the same opinion. In *Rex* v. *Dedham* the pauper let himself at 6*s.* a-week summer and winter. That was understood if the parties should happen to go on together summer and winter, and so it must be understood here if

they should continue until the harvest month. So in *Rex* v. *Mitcham* a hiring at so much a-week for as long time as the master and servant could agree, was held to be a weekly hiring, being a hiring for so long as they could agree from week to week. Here it is in effect so long as the parties can agree, and if they should go on to the harvest month, then from week to week at a higher rate of wages during that month. — *Bayley* J. There is nothing in this case to shew that the master bound himself to keep the man, or the man to serve the master, for a year. The parties were only providing, that in case the weekly contract should continue up to the harvest month, the weekly wages should be increased. There was no obligation either upon the master or the servant to continue it beyond the week. Order of sessions confirmed. *Weekly wages.*

Rex v. *Lambeth*, *T.* 55 *Geo.* 3. 4 *M. & S.* 315. The pauper's husband had been hired by one *W.* at 8*s.* *per* week *and two guineas for the harvest*, to do any thing the gardener should set him about; and under this hiring he served four years in the parish of *Chadlesworth*. The sessions were of opinion that he thereby gained a settlement in *C.* It was endeavoured to distinguish this case from *Rex* v. *Dodderhill*, *ante*, in this particular, that here was an agreement for a gross sum to be paid for the harvest, and not merely, as in that case, for an increase of the weekly wages in the harvest month. And *for the harvest* imports for a consolidated period, at least as long as a month, for which period these wages are reserved, which is inconsistent with the notion of a weekly hiring; and therefore this case falls within the principle of *Rex* v. *Hampreston*, *post*, p. 393. But *per* Ld. *Ellenborough* C. J. It does not distinctly appear whether the two guineas were to be paid *de incremento*, or were to cover the whole harvest. All that appears is, that the hiring being by the week, the parties contemplated that possibly it might last through the harvest. Order of sessions quashed. Weekly wages and two guineas for the harvest.

Wages and Notice.

Rex v. *Inhab. of Bradninch*, *H.* 10 *G.* 3. *Burr. S. C.* 662. 2 *Bott*, 199. 1 *Nol. P. L.* 373. — Removal from *Bradninch* to *Shobrooke*, both in the county of *Devon*; confirmed by the sessions, subject, &c. Case: — The pauper came to one *Samuel Ruddall*, in the parish of *Crediton*, and agreed to live with him *by the week*, at 2*s.* 6*d.* *per week*, and to *part at a fortnight's or month's notice*. The pauper being asked "*how long he intended to live with Mr. Ruddall*," replied, "he did not know, but *as long as they liked*." And accordingly, the pauper lived with Mr. *Ruddall* for eight years, under that agreement; the pauper and master being both at liberty to part from each other on a fortnight or month's notice. The pauper received his wages of 2*s.* 6*d.* *per* week, sometimes at the end of the week, sometimes at the end of a fortnight, and sometimes longer, as he wanted money. Mr. *Mansfield* moved to quash the order of sessions, objecting "that here was *no hiring for a year*," and a rule to shew cause was granted. Mr. *Heath* now Contract to part at a fortnight's or month's notice

Wages and notise.

shewed cause, and endeavoured to maintain "that this was a hiring *by the year.*" Every *general* hiring is a hiring by the year, and so the law shall construe; for, that retainer is according to law, *Co. Lit.* 42 *b.* lays this down expressly. And this is a sort of general hiring. It cannot be taken as a hiring by the *week* only; because they were not to part but at a fortnight's or a month's notice, which is inconsistent with the idea of a hiring only by the week. But the Court, without hearing the counsel on the other side, overruled Mr. *Heath's* argument, and Ld. *Mansfield* C.J. observed, that this pauper was under *no obligation to serve for a year:* whereas, in order to gain a settlement, there must be an *obligation* upon the pauper to serve for a year. Order of sessions quashed. Original order affirmed. *Vide Rex* v. *Wrington, Burr. S. C.* 280. *post,* p. 398.; *Rex* v. *St. Peter's, in Dorchester, Burr. S. C.* 513.; and *Rex* v. *Dedham, Burr. S.C.* 653. *Rex* v. *Hampreston, post,* p. 393. *Rex* v. *Great Yarmouth, post,* p. 394.

A hiring by the month, at a month's wages or a month's warning, will not be a yearly hiring.

Rex v. *Clare, M.* 16 *Geo.* 3. *Burr. S. C.* 819. 2 *Bott,* 200. 1 *Nol. P. L.* 367. 372. The pauper, being a journeyman miller, at *Michaelmas,* 1768, let himself to *E. S.* by the month, at the wages of 8*s.* a-month, and was at liberty to depart from his said service at a month's wages or a month's warning. At the time of hiring it was agreed between the pauper and the said *E. S.*, that if he continued in her service till harvest time, he should be at liberty, during the harvest month, to let himself to any other person for the harvest month. He continued five years in the service of the said *E. S.*, and during that time constantly let himself to some person or other for the harvest, and received the common wages of 8*s.* from his said mistress for the harvest month in each year, and paid her one moiety of the wages earned at such harvest, annually and during his service with his said mistress; but generally, at the end of every month, and sometimes weekly, received his wages of 8*s.* a-month, or in that proportion. And he considered himself as a monthly servant, and at liberty to leave his mistress at the end of any month, on payment of a month's wages, or giving a month's warning, according to the first agreement. This point was given up by the counsel as indefensible: the said hiring being only a hiring by the month.

Hiring at 3s. per week "the year round," and liberty to quit on a fortnight's notice, gains a settlement.

Rex v. *Birdbroke, E.* 31 *Geo.* 3. 4 *T. R.* 245. 2 *Bott,* 226. 1 *Nol. P. L.* 371. *M. Meers* was removed from *Stoke* by *Clare, Suffolk,* to *Birdbroke, Essex.* The sessions confirmed the order, and stated the following Case:—The pauper being settled at *Birdbroke* was hired by *J. Olley,* farmer, at *Stoke,* at 3*s. per* week the year round; each was to be at liberty on a fortnight's notice, but the pauper was not to go away at seed time, hay, or harvest. He stayed in that service a year at *Stoke,* and received his wages at different times whenever he pleased.—Ld. *Kenyon* C. J. said, no doubt can be entertained on this case. It does not even rest on a general hiring, for this was an express contract to serve *the year round.* But it is said that this cannot be considered to be a hiring for a year, because there was a reservation of weekly wages, and because each party was to be at liberty to put an end to the agreement on giving a fortnight's notice; but whether the wages be to be paid by the week or the year cannot make any

alteration in the duration of the service if the contract were for a year. This, therefore, was a contract for a year, at so much a-week, with liberty to quit at any time, except seed, hay, or harvest time, on giving a fortnight's notice: "but the power of giving notice makes no difference;" for it has been held that an agreement to leave the service on giving a month's warning did not defeat the settlement.—The other judges concurred, and *Buller* J. said, a hiring for a week giving a fortnight's notice was never heard of. Both orders quashed. See *Rex* v. *Great Yarmouth*, p. 394.

Wages and notice.

The power of giving notice makes no difference.

Rex v. *Hampreston*, *E*. 33 *Geo*. 3. 5 *T.R.* 205. 2 *Bott*, 207. 1 *Nol. P.L.* 367. 371. On an appeal against an order of removal from *Gillingham* to *Hampreston* in *Dorsetshire*, the sessions confirmed the order, and stated the following Case:—The pauper, *W. Gray*, being settled at *Hampreston*, went to one *S. Hannam*, a miller of *Gillingham*, and agreed to serve him for 3*s*. 9*d*. *per* week; he considered himself obliged to serve his master on *Sundays* as well as other days; and accordingly served on *Sundays*. "They had a liberty of parting on a month's notice on either side." He received 1*s*. as earnest to bind the bargain. There was no mention of time, or for how long he should serve. He continued under this contract about two years and a half, residing in *Gillingham* in the house of his master. He then went to *Tisbury* to be inoculated, where he remained two months. *Hannam* then sent for him, and he was hired again by him at the rate of 4*s*. *per* week. He continued to live with *Hannam* under the last contract for two years and a half, during which time he resided in his master's house in *Gillingham*.—Ld. *Kenyon* C. J. It is admitted, that since the case of *Rex* v. *New Windsor*, *ante*, p. 365, the circumstance of the parties having it in their power to determine the service on giving notice will not defeat the settlement where there is a contract for a year, and a year's service under it. Neither could it be disputed by the counsel, who argued in support of the order of sessions, that a general hiring is not a hiring for a year. In each of the cases cited (*a*) there was something to shew that the parties did not intend that it should be a general hiring; one was as long as the master wanted a servant, another as long as the parties liked, where, without any notice, the contract might have been immediately determined. But "wherever the relation of master and servant is to continue for an indefinite time, and cannot be put an end to at the election of either party without notice, there the hiring must be understood to be a hiring for a year." If this were not a general hiring, those who disputed that proposition should have pointed out for what time it was to continue; and indeed it has been contended to be for a month, or a month added to a week, but there is no foundation for either: for if that were so, the pauper might have left the service at the end of the first month, or of the five weeks, without giving any notice at all; but there is no pretence for that; for by the terms of the contract he was to give a month's

Hiring at so much per week, and liberty to part on a month's notice, is a general hiring.

(*a*) *Rex* v. *Newton Toney*, *Rex* v. *Odiham*, *Rex* v. *Dedham*, *Rex* v. *Birdbroke*, and *Rex* v. *Bradninch*.

Wages and notice.

R. v. Hampreston.

notice before he could determine it. And this is distinguishable from *Rex* v. *Bradninch*, for there was a hiring for a stipulated time less than a year. In this case, independent of the first contract, the parties met again after an absence, and the pauper was a second time hired at 4*s. per* week, the pauper insisting upon an increase of wages. This also was a general hiring, which in law is a hiring for a year, and the pauper having served more than a year under it in *Gillingham*, acquired a settlement there. — *Ashhurst*, *Buller*, and *Grose*, Js. concurred. — Order of sessions quashed.

A hiring to work at 3s. 6d. per week, and condition for a week's notice, does not gain a settlement.

Rex v. *Hanbury*, *T.* 42 *Geo.* 3. 2 *East*, 423. 2 *Bott*, 231. 1 *Nol. P. L.* 332. The pauper agreed to work for one *Saunders*, as a blacksmith, at 3*s.* 6*d. per* week, with meat, drink, washing, and lodging at *S*'s house: to part on a week's notice by either party. The pauper continued to serve for six years, without any alteration of terms, when *S.* died. The pauper received his wages every *Saturday* night or *Sunday* morning: went where he pleased on *Sundays*, as well as on other days: but was entitled to his board if he stayed at home. On other days, if he wanted a holiday, he asked for it and had it, his master deducting his wages. The sessions thought this a general hiring, and confirmed the order of removal from *Tardebigg* to *Hanbury*. And it was said by Ld. *Ellenborough* C. J. that this case was decided by those of *Dedham*, *Bradninch*, and *Newton Toney*. That in the first, Ld. *Mansfield* said, that all the cases required a hiring for a year, but that that was only at so much a-week. In the second, he observed that the pauper was under no obligation to serve a year, and unless that be so, there can be no settlement gained; and that *Rex* v. *Hampreston* turned upon the circumstance of a month's notice to quit being required. But here the contract was determinable at a week's notice: and there is no ground for presuming a general hiring; it appearing expressly what the original agreement was in fact, which negatives a hiring for a year.

Weekly wages, and month's notice.

Rex v. *Great Yarmouth*, *E.* 56 *Geo.* 3. 5 *M.* & *S.* 114. 1 *Nol. P. L.* 371. A hiring at weekly wages, either party to be at liberty to part *at a month's notice*, was held to be a yearly hiring; although the case stated that "*the pauper let himself by the week;*" it being also stated that at the time pauper let himself by the week nothing passed between him and his master as to his being hired by the week, except that he was to have weekly wages.

3. Of the Performance.

(*a*) *What deemed a service for a year.*
(*b*) *Connected services under different hirings.*
(*c*) *Change of master.*
(*d*) *Dispensation.*
(*e*) *Dissolution.*

(*a*) What deemed a Service for a Year.

What shall be deemed a service for a year.

Unless such person shall continue and abide in the same service during the space of one whole year] What shall be deemed the

same service within the meaning of this explanatory statute, (8 & 9 *W.* 3. *c.* 30. § 6. *ante*, p. 336) hath been much controverted. Concerning which there have been the following resolutions:

Service under a minor hiring followed by a yearly hiring.

In the case of *Dunsford* v. *Ridgwick*, *M.* 9 *An. Fol.* 133. 2 *Bott*, 250. 1 *Nol. P. L.* 356. *Ante*, p. 352. Mr. *Foley* says, the Court declared, that there ought to be one entire contract, and one entire service for a year, pursuant to that contract. And Mr. *Blackerby*, in reciting that case, says, it was then held, that there must be one entire hiring, and one entire service in pursuance of such hiring, for a whole year, that must make a settlement. *Blackerby*, 244. But it must be observed, that this was not properly the point in question. For the question there was, whether a hiring for two half-years should be deemed a sufficient hiring, and not what should be sufficient service under such hiring?

Hiring for a year, and service for a year, but not under the same hiring.

We proceed therefore to the case of the inhabitants of *South Moulton*, *H.* 10 *W.* 1 *Ld. Raym.* 426. A maid-servant was hired for half a year; which time she served: And then was hired for a year, and served half of that.—*Rokeby*, *Turton*, and *Gould* (*Holt* C. J. being absent) held it to be a settlement, because the statute designed only that the party should serve a year.

A settlement may be gained by a service under a hiring for half a year, and a second hiring for a whole year.

So likewise in the case of *Rex* v. *Overton*, *H.* 10 *W. Burr. S. C.* 549. *n.* 2 *Bott*, 250. 1 *Nol. P. L.* 446. which was thus: *Bridget Bayly* on or about the 25th day of *March* contracted with one *John Orpwood* of *Steventon*, for the wages of 20*s.* to serve him from the said 25th day of *March*, 1697, till *Michaelmas* then next following: which time she served accordingly. And at the said *Michaelmas* the said *Orpwood* contracted with the said *Bridget*, from the said *Michaelmas* for one year ensuing, for the wages of 30*s.* And the said *Bridget*, according to the last-mentioned contract, remained with the said *Orpwood* till some time in the month of *April*, 1698; in which month, by the mutual consent of the said *Bridget* and *Orpwood*, she left her service, and he paid her the proportion of wages then due. The sessions thinking the above-mentioned hiring and service aforesaid, continuing for the time of more than one whole year, to be a good settlement, confirmed the order of the two justices for sending her to *Steventon*. And of this opinion was the Court: and the orders were confirmed.

Brightwell v. *Westhallam*, *E.* 1 *Geo.* 1. 1 *Sess. Ca.* 87. *Fol.* 143. 2 *Bott*, 251. 1 *Nol. P. L.* 460. There was a hiring and service from three weeks after *Michaelmas* to *Michaelmas*, and then a hiring for a year, and service for eleven months. The C. J. said, if there were a service for a year, under a hiring from week to week, and then a hiring for a year, *and serving for forty days* (*a*), he should adjudge that a settlement. The reason is, because by the 3 *W. & M.* c. 11. a hiring for a year, and 40 days service under it, made a settlement; in regard that the hiring for a year shewed that the person was not likely to become charge-

So, where there is a hiring from three weeks after Michaelmas to Michaelmas, and then a hiring for a year and service for eleven months after second hiring.

(*a*) But in the case of *Rex* v. *Adson*, (*post*, p. 397.) it was determined, that forty days service under such yearly hiring was not necessary to gain a settlement.

Service under a minor hiring followed by a yearly hiring.

able, for that he was able to work: but by 8 & 9 *W*. 3. *c*. 30. the service must be during the space of one whole year. So forty days is a good settlement to an apprentice, in respect to his skill and art, by which he is supposed unlikely to become chargeable. So a person that has paid parish dues, or served offices in a parish, gains a settlement by 40 days, because he is supposed a person of substance, unlikely to become chargeable. But the late act requiring service for a year, as well as an hiring, we think it sufficient if the words be answered, considering this with the design of the former statutes.

So, where there is a hiring and service from Christmas to Michaelmas, and then a hiring for a year, and a service till Midsummer under the second hiring.

Rex v. *Aynhoe, M.* 1 *Geo.* 2. 2 *Sess. Ca.* 119. *Fol.* 144. 2 *Bott*, 253. 1 *Nol. P. L.* 446. The pauper was hired in *Bicester* from *Christmas* to *Michaelmas*, and served till *Michaelmas*; then was hired for a year, and served till *Midsummer*. And this was adjudged to gain a settlement in *Bicester*. There were cited for it the cases of *Rex* v. *Overton*, and of *Brightwell* v. *Westhallam* (*ante*.) — Lord C. J. *Raymond* said, the case of *Westhallam* was express to the point, and he would not break into it; but if it had been *res integra*, or a case not adjudged before, he should have thought it ill. Here the service was antecedent to the hiring for a year. The greater part of the judges thought this case to be against the statute, but that they were more strongly bound by the precedent; and were unwilling to set aside a resolution solemnly adjudged, though not according to their own opinion.

So, where there is a hiring and service from Christmas to Whitsuntide, and then a hiring for a year, and service till the beginning of the March after the Christmas.

Rex v. *Underbarrow* and *Bradley-Field, H.* 6 *Geo.* 3. *Burr. S. C.* 545. 2 *Bott*, 259. 1 *Nol. P. L.* 447. The pauper, *Anne Kellet*, hired herself at *Christmas* to *John Thompson*, of *Crosthwaite* and *Lythe*, till *Whitsuntide* then next following, which time she served. At the same *Whitsuntide* she hired herself to the said *John Thompson* for one year, and continued in the said service till the beginning of *March* following, when she and her master parted by consent. The sessions were of opinion, that the said *Anne Kellet* gained no settlement by the said service in *Crosthwaite* and *Lythe*; the sessions quashed the order of removal. It was moved to quash the order of sessions, for that there was, upon the state of the facts, a hiring for a year and a service for a year, when both were coupled together; though indeed the first hiring was for less than a year, and the second service was likewise for less than a year. On shewing cause it was urged, that the two leading cases (*ante*) of *South Moulton* and of *Rex* v. *Overton*, were determined upon facts prior to the explanatory statute of the 8 & 9 *W*. 3. before which statute a hiring for a year and a service for forty days gained a settlement. And it was observed, that in the last case of *Aynhoe*, Lord *Raymond* and also Mr. J. *Page* declared, that if it had been then *res integra*, they should have adjudged it to be no settlement in *Bicester*: And now it appears to be so; as the two supposed precedents were no precedents at all, being prior to the statute of the 8 & 9 *W*. 3. — By the Court: The authority of these cases will be just the same, whether the facts were prior to the statute or not: because the Court determined them as upon facts subsequent to the statute. And there having been many determinations the other way, the Court were unanimously of opinion, that for the sake of certainty it was best to adhere to settled determinations. Though there might be room for great doubt upon

this point, if the matter were again open, yet the rule *stare decisis* is always proper, and especially in these cases of settlements. And the order of sessions was quashed, and the original order affirmed.

Service under a minor hiring followed by a yearly hiring.

[Note; upon searching the records, it hath appeared, that the case of *Bridget Bayly* was *after* the explanatory statute of the 8 & 9 *W.*, and the mistake did arise from the errors of the several reporters of that case, as to the particular times of her hiring and service. The other case, *viz.* of *South Moulton*, is not to be found upon the file: and the report thereof in Ld. *Raymond* is so very imperfect, that nothing can with certainty be concluded from it. Sir *James Burrow* takes notice, that it is not impossible that this case of *South Moulton* may be the very same with that of *Overton*. Which conjecture seems to be supported by this observation, that the reporters of both the cases express that *Holt* C. J. was absent. And there was no other determination in that term, according to the reports thereof in Lord *Raymond*, wherein it doth not expressly appear that *Holt* C. J. was present.]

Rex v. *Adson*, *H.* 33 *Geo.* 3. 5 *T. R.* 98. 2 *Bott*, 268. 1 *Nol. P. L.* 460. The pauper was hired in *Church Stow* eight days after *Old Michaelmas*, 1786, to the *Old Michaelmas* following, and continued in his master's service till the day after *Old Michaelmas* day, 1787, when he was hired by his master till the *Michaelmas* following, and under that hiring he only served ten days. The sessions thought that the second hiring was a hiring for a year, but that the pauper had gained no settlement under it, as he had not served forty days subsequent to that hiring. This case was argued in *Michaelmas* term last, when only Lord *Kenyon* C. J. and *Grose* J. were present: Lord *Kenyon* was of opinion that a settlement was gained by the hiring and service stated in the case: but *Grose* J. being of a different opinion, it stood over for further consideration; and now Lord *Kenyon* said, that they were both of opinion that the pauper gained a settlement in *Church Stow*.

So a hiring and service for less than a year, and then a hiring for a year, but only ten days' service under the yearly hiring, will gain a settlement.

(*b*) Connected Services under different Hirings.

Rex v. *Underbarrow* and *Bradley-Field*, *H.* 20 *Geo.* 3. *Doug.* 309. *Cald.* 65. 2 *Bott*, 262. 1 *Nol. P. L.* 460. *Thomasin Hallhead* being settled in the township of *Underbarrow* and *Bradley-Field* by a derivative settlement from her father, was hired for a year in the said township of *Underbarrow* and *Bradley-Field*, from *Whitsuntide*, 1770, to *Whitsuntide*, 1771, to one *Burrow*, for the yearly wages of 18*s.*, where she lived with him under this hiring till the 12th of *May*, being *Old May-day*, 1771: her master then removing to a new farm in the township of *Strickland Roger*, carried her with him, where she served seven days, which completed her year, and received her wages. Then she again hired herself to the same master for another year, from *Whitsuntide*, 1771, to *Whitsuntide*, 1772, for the wages of 25*s.*: and under this last hiring she continued with him in *Strickland Roger* from *Whitsuntide*, 1771, till *Candlemas* following, when by mutual consent she quitted her service, and received her wages up to that time. — By Lord *Mansfield* C. J. We are all very clear that this was a continuance of the same service with

A hiring and service for a year at 18*s.* wages, and then hiring for another year at 25*s.* wages, and service for part of the latter year, is a continuance of the same service at higher wages: and the settlement is in the parish where the service concluded.

Connected services under different hirings.

Hiring for *the year*, with a continued service under a renewed engagement for *another* year.

an increase of wages. And that a settlement was gained in *Strickland Roger:*

Rex v. *Overnorton*, E. 52 *Geo.* 3. 15 *East*, 347. *Bott*, *Cont.* 139. 1 *Nol. P. L.* 367, 457. Order of removal from the hamlet of *Overnorton* to the parish of *Great Rollright*, both in the county of *Oxford*; discharged by the sessions, subject to the opinion of the Court on the following Case: — On *Monday* after *Michaelmas* day, *viz.* on the 17th of *October*, 1803, *William Biggerstaffe*, the pauper, was hired to serve Mr. *Jolly* of *Overnorton*, for *the year* at 9*s*. 6*d*. *per* week. He served under that hiring, and regularly received the 9*s*. 6*d*. every week, either on the *Saturday* or the *Monday* following, till the 13th of *October*, on which day for the last time he received 9*s*. 6*d*. Three or four days previous to the 13th of *October*, he had a conversation with his master, and agreed to serve him for another *year*, at 10*s*. a-week. On the 20th of *October*, he received 10*s*., concerning which no explanation took place at the time, but the pauper said in evidence that he received it under the *new* hiring. He continued in the service all that year, and seven weeks after. He was married eight weeks after the first hiring. — It was contended that the hiring at so much a week for *the* year, must mean the current year, *i. e.* 1803. [But *the Court* said, that the justices were to determine what year was meant, and they had considered that it was for the space of a year from the hiring.] Then it was contended that the first hiring was put an end to on the 13th of *October* before that year was expired, and then the pauper being married, could not gain a settlement under the second hiring according to *Rex* v. *Chilton*. — *Grose* J. Whatever the decisions might originally have been upon the construction of the statute, the rule of law is now inveterate, that if the justices find a hiring for a year, and a continued service for a year, though not under the same hiring, that is decisive to give a settlement. — *Le Blanc* J. The sessions would have done better not to have found any special case, for strictly speaking it is a question of fact, whether the first contract was intended to be for the space of a year, or only to the end of the current year. But if they thought it was only to enure to the end of the current year, they would have come to a different decision. But however equivocal the expression might have been at first, when the master and servant, on the 13th of *October* in the following year, spoke of a contract for *another year*, that shewed that they had originally intended a yearly hiring. Then there was clearly a continued service of the same description for a year. — *Bayley* J. The sessions were the proper judges to draw the conclusion as to whether the original contract was dissolved before the end of the year; and I cannot say they have done wrong. There was no reason for dissolving it. Order of sessions confirmed.

A weekly hiring may not be connected with a yearly hiring if the service under the weekly hiring is not similar in

Rex v. *Wrington*, *M.* 22 *Geo.* 2. *Burr. S. C.* 280. 2 *Bott*, 184. 1 *Nol. P. L.* 373. 454. *Anne Stokes*, the pauper, when thirteen years of age, went into *Chew Magna* to the house of her aunt; and soon afterwards went to *Winford*, and worked with one *Nicholas Walker*, cloth-worker, in the business of burling cloths, by a weekly hiring or agreement at the weekly wages of 1*s*. 6*d*. each week in the winter, and 2*s*. each week in the sum-

mer. On *Saturday* in each week, *Nicholas Walker*, when he paid the pauper her wages for that week, said to her, that she should come the week following. Which she accordingly did, and renewed the contract for the week ensuing, in the same method. She continued to work with the said *Nicholas Walker* in *Winford*, in the manner abovesaid, for a year and a-half; but during all that time constantly returned in the evening, and lodged at her aunt's in *Chew Magna*, and also resided with her aunt there on *Sundays*. On the last *Saturday* of the said service, the pauper covenanted to serve the said *Nicholas Walker* for a year at 1*l.* 10*s.* wages; entered immediately into the said service, and continued therein eleven months in *Winford*.—By the Court: The pauper did not acquire a settlement by this service in *Winford*. For though a subsequent service for less than a year, performed under a hiring for a year, may be coupled to a prior service which was not performed under a hiring for a year, provided it be a continuance of the same service; yet the subsequent service cannot, in the present case, be coupled with the former, because the former hiring was not of the same kind with the latter: the former was as a day-labourer, or weekly labourer at most; not as a hired servant, who is part of the master's family. (See, however, *Rex* v. *Sutton*, *infra*.)

Connected services under different hirings.

kind to that under the yearly hiring.

Rex v. *Bagworth*, *E.* 22 *Geo.* 3. *Cald.* 179. 2 *Bott*, 262. 1 *Nol. P.L.* 447. *Sarah Ward* was removed from *Bagworth* to *Ratby*. The sessions quashed the order, and stated specially, that nine weeks before *Old Michaelmas*, 1780, the pauper was hired by *William Hunt* of *Ratby* for one week at 2*s.* 6*d.* wages, and continued to serve in his house by the week till *Old Michaelmas*, and received her wages every week. That during that time she considered herself at liberty to have quitted her service at the end of any one week, and to have hired herself to any other person. That at the said *Old Michaelmas*, 1780, she was hired for a year from that time, and served till about a fortnight before the following *Old Michaelmas*, when being with child she and her master parted by consent, and she received her wages up to that time. That she was employed in the same manner during the time she served by the week, as under the hiring after *Michaelmas*.—*Willes* J. The question raised upon the merits is perfectly clear; the pauper did not live in this family occasionally, or work merely as a day-labourer or charwoman, but constantly as a menial servant, and employed throughout in the same services; and a hiring for a year, with a year's service in the whole, and that of a similar nature throughout, though it is made up of several hirings, (provided there be no discontinuance,) gives a settlement.—*Buller* J. Here is a continuance in the service for a year: and it has been long settled, that where the service extends throughout the year, you may couple any number of preceding hirings and services with a hiring for a year; the extent and duration of the several preceding services, "where such services have been similar," have never been adjudged to vary the law, but there must be one entire hiring for a year. Order of sessions quashed, and the order of the two justices confirmed. (See however, *Rex* v. *Sutton*, *infra*.)

But if similar in kind they may be connected.

Coupling hirings and services.

Rex v. *Sutton*, *T.* 41 *Geo.* 3. 1 *East*, 656. 2 *Bott*, 272. 1 *Nol. P. L.* 342. 447. 455. The pauper having gained a settlement

But now there is no distinction to be made be-

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tween services similar and dissimilar.

in *Cheam*, hired himself by the week to Mr. *Hatch* of *Sutton*. Nothing was said about *Sunday* in the contract; but the pauper worked on that day occasionally when asked by his master, without receiving any additional wages; though he sometimes received some victuals. He received his wages every *Saturday* night or *Sunday* morning: and resided in his master's house during no part of the time, but boarded himself. At the expiration of nine months, on his master's family-servant going away, the pauper was hired in his place for a year, at 12*l*. *per annum*, and served eleven months under that hiring. The sessions, being of opinion that the pauper gained a settlement in *Sutton* under such hiring and service, confirmed the order.— Ld. *Kenyon* C. J. It has now been too long settled to be recalled, that if there be a hiring for a year, and a service for a year, though but a small part of the service were performed under the yearly hiring, a settlement will be gained. But an attempt has been made to introduce a new head of settlement law, of which I have no knowledge, under a notion that only services, *ejusdem generis*, as it has been said, can be joined. The term got into fashion some time ago. At that period Mr. J. *Foster* thought that settlements were too easily acquired by the construction which the Court was inclined to put on the statute: but since then the leaning has been in favour of them; and it has been supposed that a person ought to gain a settlement in that parish where he has laboured for a certain time, as a reward for his labour: a strange idea, if examined; because some where or other he must at any rate be maintained, if he be in want of it. I know not how to state this as a question upon which any doubt can be made. The pauper was hired by the week; nothing was said about *Sunday*; it is very seldom that there is: why then is that day to be excluded? If a servant be hired for a year, nobody doubts but that *Sundays* are included: then why not included in a weekly hiring, if no exception be made? The sessions have found that there was a hiring by the week, which must mean the whole week. There is nothing stated to shew it was otherwise intended. The pauper was paid sometimes on the *Saturday*, sometimes on the *Sunday*; and whenever the master ordered him to do any work on the *Sunday*, he did it: what is to be concluded from thence, but that it was his duty to do so? How do these facts shew that he was not under the master's controul on the *Sundays* as well as other days of the week? In *Rex* v. *Wrington*, *ante*, p. 398., it appeared from the circumstances that *Sundays* were excluded. But it is said, that the services cannot be joined, because they were not *ejusdem generis*. I really know not what that means, nor where the line is to be drawn. Suppose a postillion were made coachman, would those be deemed services *ejusdem generis*? It is said, that he at first was an outdoor servant, and then a family-servant; but I do not know what difference that made in his services. Upon the whole, I cannot do better than what the justices below have done; they have determined that there was a continuing service for a year, and a hiring for a year, and that he gained a settlement; and I think they are warranted by the authorities in that conclusion.

First service under contract entered into

Rex v. *Dawlish*, *H.* 58 *Geo.* 3. 1 *B.* & *A.* 280. 1 *Nol. P. L.* 448. Removal from the parish of *Clyst Honiton* in the county of *Devon*,

Connected services under different hirings.

while the party under indenture of apprenticeship,

to the parish of *Dawlish* in the same county. The sessions confirmed the order, subject to the opinion of the Court K. B. on a case which stated in substance as follows: The pauper by indenture dated *September* 3, 1804, was bound apprentice by the parish officers of *Broadhembury* to *Robert Pearcy* of that place, till she should attain the age of twenty-one; whilst under this indenture she served *John Blackmore* with *Pearcy's* express consent, for two years in the parish of *Dawlish*, after which in *May*, 1812, she hired herself as a yearly servant to Mrs. *Bryant* of the parish of *Clyst Honiton* for 4*l.* a-year. In the *September* following the indentures expired. At the end of her year, the pauper again hired for another year to Mrs. *Bryant*, and served ten months under this last hiring. There was no interruption between the two services. The first year's service with Mrs. *Bryant* was without the knowledge and consent of *Pearcy*, the master. — After argument, Ld. *Ellenborough* C. J. said, If this were *res integra* there might be some difficulty in admitting the principle that a service without a contract might be coupled with service under one, so as to gain a settlement; but that having been decided, this case ranges itself under the same class. — *Abbot* J. said, The first contract was either valid or void: if valid, then there is a good hiring and a good service; if void, then the first year's service will be a service under no contract at all, which, according to the argument, it is admitted may be coupled with the service under the second hiring. In either case a settlement is gained. (*a*)

A hiring for year, and a service continuing beyond the year for six months without a new agreement, gains a settlement in the place where the service was performed for the last forty days

Rex v. *Croscombe*, *M.* 19 *Geo.* 2. 2 *Stra.* 1240. *Burr. S. C.* 256. 2 *Bott*, 278. 1 *Nol. P. L.* 445. 447. Two justices removed *Joseph Garnsey* from *Croscombe* to *St. Cuthbert's*. The sessions quashed the order, and stated specially, that the pauper hired himself for a year to Dr. *Lucy*, and lived a year with him in *St. Andrew's*, and had his wages and livery; and without coming to any new agreement, continued with him a quarter of a year longer. Then the master removed with his family (*Joseph Garnsey* being one) to *St. Cuthbert's*, where the said *Garnsey* continued to live with him about six months, still under the same contract. It was moved to quash the order of sessions, for that they were mistaken in point of law; the service in *St. Cuthbert's* being a continuance of the first contract and under it, for the said six months. On the other side it was urged, that this was not the same service as the first year's was, for that the first contract was completed and executed on both sides, and was determined. It had gained the servant a settlement in *St. Andrew's* by serving a whole year there. Unto which it was replied, That it is the constant practice for servants to go on upon the first agreement without any new one. And if this were not the case, then a servant who had lived with his master twenty years in different parishes without any new contract, must be settled in the parish where his master had

(*a*) But where the service is not under a contract, creating the relation of master and servant and an obligation to serve, but under a contract as between a teacher and scholar, such service will not connect with a subsequent agreement by the latter, to work for twelve months at certain wages, *Rex.* v. *St. Mary's*, *Kidwelly*, 1 *Nol. P. L.* 448. *ante.*

lived in the first year of his service. And by the whole Court: as there was a hiring for a year, and a continuance under the same service, it is sufficient to gain a settlement; and such settlement must be in the parish where it was performed the last forty days.

As relating to the Period between the Completion of the first, and the agreeing for the second Service.

If the hiring be from November to Michaelmas, and the servant continue in the service till the second day after Michaelmas without any new agreement, and on that day there be a new agreement for a year from that day, the two services may be coupled, "or rather the two services may be coupled by the means of the service upon the intervening day."

Rex v. *Sulgrave*, *E.* 27 *Geo.* 3. 1 *T. R.* 778. 2 *Bott*, 266. 1 *Nol. P.L.* 376. 399. 411. 454. The pauper, subsequently to his gaining a settlement at *Sulgrave*, was hired to *Jonas Welch* of *Wormleighton*, the latter end of *November* 1785, till *Michaelmas* next, at 6*l.* 10*s.* wages. Two or three days before *Michaelmas* day his master offered him the like sum for the year ensuing, which he did not think sufficient. On *Michaelmas* day his master offered him seven guineas, and they agreed all but the expense of washing. The pauper had no intention of leaving his master, and he believed his master had no intention of parting with him; he continued in his master's house and did his work as usual, but without any obligation; he lodged at his master's house, and did not remove any of his clothes, or offer himself to any other master, nor did his master seek after another servant. He thought himself at liberty to have left his master if any better hiring had offered. He did not agree with his master on that day, but the next day but one, being the second day after *Michaelmas*, he agreed to accept seven guineas as before offered him for the year ensuing. He did not expect that his wages were to be due on the *Michaelmas* following; but at the expiration of the year from the day on which he agreed to accept the seven guineas. He continued in the service till the *Whitsuntide* following. — *Ashhurst* J. I think this was a good service in *Wormleighton*, according to the authority of all the cases cited. All that the statutes require is, that there should be a hiring for a year, and a continuance in the same service for a year. Now the case states that in *November* 1785, the pauper was hired to serve till the *Michaelmas* following, that two or three days before *Michaelmas* the master offered him the same wages for the next year; that on *Michaelmas* day he offered him seven guineas, and that on the second day after *Michaelmas*, the pauper agreed to accept the seven guineas which had been before offered. It is further stated, that the pauper had no intention of leaving his master, and that he did all his master's work as usual; and though he thought himself at liberty to leave his master's service on the *Michaelmas* day, and when he agreed with his master the second day after *Michaelmas*, he considered that the year was to be computed from that day, yet there was a good hiring and service for a year: If so, the only question is, whether there were any discontinuance? It appears from the case there was not; for the servant continued in the same capacity; he did his work as usual; and if he had continued to serve for half-a-year without entering into any new contract, he would have been entitled to a compensation for such service; the law would have implied that he continued under the former agreement, and would have measured his damages by his former wages. Then he must be taken to have been in the capacity of a hired servant during that time. This is like the case of *Rex* v. *Croscombe*. There the pauper

was hired to Dr. *Lucy* who lived in *St. Andrew's* for a year, and he continued with his master a quarter of a year longer, without coming to a new agreement, when he removed with his master into the parish of *St. Cuthbert*, where he continued six months; there was a sufficient continuation of the same service so as to give the servant a settlement in *St. C.* In that case the servant was as much at liberty to quit his master's service after the first year, as the pauper in this case was on the *Michaelmas* day, and it might as well have been said, that in that case there was not a continuance of the same service, but there the pauper gained a settlement in *St. Cuthbert's*. The cases which were cited, *viz. Rex* v. *Fifehead* and *Wichford* v. *Bretford*, do not apply, for one was determined on the ground of there being no fraction of a day; and in the other there was a total discontinuance of the service; and though the service was only discontinued for a day, it could not be coupled with the subsequent one, so as to give the pauper a settlement.

When services shall be continued, as relating to the period between the conclusion of the first, and the day of the agreement for the second service.

Rex v. *Fifehead Magdalen, M.* 11 *Geo.* 2. *Burr. S. C.* 116. 2 *Bott*, 256. 1 *Nol. P. L.* 445, 446. 452. *William Trim* hired himself to a master at *West Stower*, from *Midsummer* to *Lady-day*, being three quarters of a year for 40*s.* At *Lady-day* he received his wages of 40*s.* and left his master's service, and then went to his father's house in *West Stower;* and in about an hour returned to his master, and agreed with him for a year, at 3*l.* 10*s.* a-year, and lived with his master half-a-year, in pursuance of the second agreement. When he went from his master's house, he had no clothes but what he wore, except a shirt, which he left at his master's house.—Ld. C. J. *Lee* said, he remembered the resolution was first come into in Ld. C. J. *Parker's* time, that a hiring for a year, and a service for a year were sufficient to gain a settlement, though all the service should not be under the same contract; and that *Sir Thomas Powys* (who was just come into the Court) very much boggled at it: But now, he added, the rule is established, that if there be a hiring for a year, and a service for a year, it will gain a settlement, though the whole service is not under the first hiring. And in this case, the absence for an hour, which was only to consult his father about a new contract, ought not to be looked upon as a discontinuance. Upon every new contract there is a sort of discontinuance. The last day of the former contract was the first day of the second service. And this was only an hour's absence within the space of that same day. Therefore he remained a servant during the whole time of the completion of his year.

If a new contract be entered into on the last day of the first contract, there is no discontinuance, though there be an hour's interval between the termination of the first service and the beginning of the second, and the servant leave the place for that hour.

Rex v. *Ellisfield, H.* 17 *Geo.* 3. *Cald.* 4. 2 *Bott*, 261. 1 *Nol. P. L.* 453. The pauper was hired on 6th *December* 1773, to *John Dalman* of *Ellisfield*, to serve till *Michaelmas* 1774; he went into the service the next day, and continued therein till nine o'clock on said *Michaelmas* day, when he received his wages, and took his clothes, and left his master's house and service: about half an hour afterwards, his master came to him and desired him to stay, but the pauper asked more wages than the master was willing to give, but said he would see him presently at *Basingstoke* fair held that day for the hiring servants; at the fair at one o'clock he made an agreement with the master to serve him till *Michaelmas* following, and went into his service that

So also, whatever the interval may be, provided it be part of a day only.

Service under a hiring for a year followed by a minor hiring.

evening, and continued therein for three months: the pauper thought himself at liberty to hire himself to any other person as soon as he left his master's house, and should have hired himself to any person who would have given him the wages he asked his master. — By Ld. *Mansfield* C.J. and the Court: There is not the difference of an *iota* between this case and that of *Fifehead*, and every argument used there would apply in the present: It is said there, as here, that the pauper left his master's service, received his wages, and was absent some time; he might have hired himself with any other master during his absence: upon his return he does not agree to continue the *old* service, but makes a *new contract* for more wages: there was, therefore, a complete abandonment and discontinuance. The ground on which the Court went in that case, and which holds equally in the present, was, that the law will not make a fraction of a day; and the reason and justice of the case is with the settlement. As to the interruption and discontinuance, *Chapple* J. observed very properly in the *Fifehead* case, that upon every new contract there is a *sort* of discontinuance, and that the law of connecting two hirings within the year, which was now settled, could not be supported, where the first period was suffered to elapse before the second contract was made, if this were otherwise.

Also a settlement may be gained by a service under two hirings, whereof the yearly hiring preceded that which was for less than a year. And also, there may be an interval between the two services if one end and the other begin, *on the same day*, and the discontinuance will not prevent a settlement; even though the servant quit during that interval.

Rex v. *Grendon Underwood, T.* 23 *Geo.* 3. 2 *Bott*, 264. *Cald.* 359. 1 *Nol. P.L.* 390. 449. 460. The pauper on *Friday* before *Michaelmas* hired himself for a year from that *Michaelmas* to *J. H.* to be his carter; he had 11*s.* earnest, was to have 6*l.* wages, and to go into his master's service the *Wednesday* after *Michaelmas* day. On that day he came to his master's, who told him he had hired another servant in the place he had hired him to do; but that he wanted a man to milk and go to plough, and if he liked that work he might stay; the pauper refused; his master told him he might keep his earnest and go about his business; the pauper said, "Am I at liberty to hire myself to any other person?" his master answered in the affirmative. The pauper then went away. In the same afternoon the master met him again, and hired him to serve the place of milkman and go to plough; gave him 2*s.* 6*d.* earnest, and agreed to give him 6*l.* 6*s.* wages, to serve him from that time till *Michaelmas*. The pauper immediately entered into the service, and continued till *February*; his master then hired him to serve the place of carter from that time to *Michaelmas*, gave him earnest, and agreed to give him 10*s.* 6*d.* additional wages; and the pauper continued till *Michaelmas*. — Ld. *Mansfield* C. J. In this case it is expressly stated, that on the *Friday* before *Michaelmas* day the pauper was hired for a year from *Michaelmas*. It is then expressly stated, that they stood in the relation of master and servant from *Michaelmas* to *Michaelmas*. If so, it would be repugnant to say, that this was not a hiring for a year. The case itself contradicts the idea, that it was a hiring from the *Wednesday* after *Michaelmas*. Then the absence was matter of indulgence on the part of the master; and whether revocable or not, is so common in these transactions, and so reasonable upon the commencement of a service, that it never has been considered as impeaching or affecting the validity of a contract: but under all these circumstances I consider it as an indulgence which the master might revoke; and that it was a

hiring and service for a year without any interruption on account of the short disagreement. — *Buller* J. said that in this as in all other contracts, all the words must have effect given them, if possible. The case expressly stated a hiring for a year, and if the conduct of the servant, in not coming into his service till the *Wednesday*, were considered as an act of right, founded upon an exception in the original contract, the contract would be overturned: whereas by construing it as a licence or dispensation, effect is given to the whole. If then after the hiring for a year, which is expressly stated in the case, the leave of absence was given, absence by leave is the same thing as service.

Service under a hiring for a year followed by a minor hiring.

This case also seems to decide that a hiring for a year may be connected with a subsequent hiring for less than a year. So *Rex* v. *Alton*, *post*, p. 405.

Rex v. *Fillongley*, *H.* 58 *Geo.* 3. 1 *B.* & *A.* 319. 1 *Nol. P. L.* 434. 451. Upon an appeal against an order of two justices, by which *William Downes*, his wife and child, were removed from the parish of *Coleshill* in the county of *Warwick* to *Fillongley* in the same county, the sessions confirmed the order, subject to the opinion of the court of K. B. on the following Case: The pauper being settled in the parish of *Fillongley* previous to *Old Michaelmas* in the year 1812, was hired by one *William Hollick* of the parish of *Ansley* in the county aforesaid, from the then next *Old Michaelmas*, for a year, at 7*l.* 10*s.* wages: At the same time the said *W. Hollick* said to the pauper, that he did not know the custom of the parish as to hiring for a year or fifty-one weeks; that he would inquire, but he believed it must be for a year, and hired him for a year. The pauper entered into the service in pursuance of this contract; three or four days after which *W. Hollick*, (having previously to the pauper coming into his service ascertained that the practice of the parish was to hire for fifty-one weeks) asked the pauper whether he would consent to the hiring being for fifty-one weeks, to which the pauper consented. He continued in Mr. *Hollick*'s service until a week before *Old Michaelmas* in the next year, when the said *W. Hollick* paid him the 7*l.* 10*s.* for his wages, and asked him to stay on till *Old Michaelmas*, which he agreed to do on being paid for it; he staid till *Old Michaelmas*, and received 1*s.* 6*d.* for that time. — After argument Ld. *Ellenborough* C. J. said, If the statutes are to be strained in any respect, it seems to me that the mind revolts much more from coupling a previous service with a subsequent hiring for a year, than from the conclusion to be drawn in the present case. I think this case, therefore, within the limits of the former decisions. If it were now for the first time under our consideration, I should be disposed to pronounce a different judgment: but the decisions are so numerous upon the subject, and we should overturn so many settlements if we were to over-rule them, that I feel myself bound by their authority to hold this to be a good hiring and service. — *Bayley* J. I am of the same opinion upon the ground of the authorities alone. There is in this case a hiring for a year, and a service for a year, and that according to the decisions will be sufficient to confer a settlement. *Abbott* and *Holroyd* Js. concurred. Order of sessions quashed.

A service under a hiring for fifty one weeks may be coupled with a service under a previous hiring for a year, so as to confer a settlement.

Rex v. *Caverswall*, *E.* 31 *Geo.* 2. *Burr. S. C.* 461. 2 *Bott*, 308. 1 *Nol. P. L.* 417. 451. *Samuel Brassington*, the pauper,

Service under a hiring for a year followed by a minor hiring.

was hired for a year to *Edward Brassington* at *Trentham*, and served him till within three weeks of the end of the year; when on some disputes arising betwixt him and his master, he was, with his own consent, discharged from his service; and received all his wages, except what was deducted for the three weeks. As soon as he left his service he went to *London*, and was absent about a fortnight. Upon his return, at Mrs. *B.*'s request, (his master being then from home,) he went again into their service; and within a week after the expiration of the first year, his master hired him again for another year, and he served him in *Trentham* for about six months of that second year, and then left him. By the Court, here was a discontinuance. The first contract was absolutely dissolved, and so continued for a fortnight or three weeks. Therefore this last service cannot be connected with the former part of the year, and consequently no settlement was gained at *Trentham*.

Hiring first for a year, and agreeing in the middle of the year to work by the piece.

Rex v. *Alton, E.* 24 *Geo.* 3. 2 *Bott*, 222. 1 *Nol. P. L.* 416. 451. The pauper, *R. Johnston*, being settled in *Alton*, *hired* himself to his uncle, *D. Johnston*, a turner, in the parish of *Midhurst*, *for a year*. The pauper was to be found in board, lodging, pocket-money, and clothes by his uncle, for whom he was to work in his trade of a turner; after he had served six months, his master finding him idle, they came to a new agreement, by which the pauper was to work in the said trade by the piece, and to be paid by the piece for what he should earn, and he to find himself in board, lodging, and clothes; on which last terms he served to the end of the year, sometimes working by the piece when he boarded and lodged out, and at other times he served his master in the house, and then he was lodged and boarded by his master. The sessions held, that this new agreement determined the contract, and that the pauper gained no settlement. But by the Court, It is not necessary that all the service should be under a hiring for a year; a service under a hiring for less than a year, may be coupled with service under a hiring for a year, and give a settlement; there are many cases to that purpose; there can be no doubt but the original agreement still continued, and besides, the second hiring being general, would be equivalent to a hiring for a year. Order quashed.

Servant marrying during the first service can not gain a settlement under a subsequent hiring for a year.

Rex v. *St. Giles's, Reading, T.* 18 *Geo.* 3. *Cald.* 54. 2 *Bott*, 261. 1 *Nol. P. L.* 457. The pauper being an unmarried man, went into the service of Mr. *Wilder*, who kept an inn in the parish of *St. Mary, Reading*, on 19th *December*, 1763, under a general hiring as post-boy, and continued in that service in the said parish for seven months, when he married his present wife; after his marriage, he continued in his said master's service four months, when he took lodgings in the parish of *St. Giles*'s, and removed thither with his said wife, where he slept for seven months, continuing to serve his said master the whole time without coming to any new hiring, making eighteen months in the whole; and then left his service.—*Willes, Ashhurst*, and *Buller*, Js. thinking the point new, took time to consider:—Afterwards, *Willes* J., the court being then full, delivered the judgment of the Court: This case depends upon the construction of the 7th sect. of stat. 3 *W.* 3. *c.* 11. The act was intended for the benefit of unmarried persons, and the principle of it is, that the parish that reaped the benefit of

the labour of a man unincumbered with a family ought to make a provision for that man when not able to provide for himself, but not for others from whom they derived no benefit; the 8 & 9 *W.* c. 3. § 30. used the very same words as the former stat. "unmarried person not having child or children." The meaning of these acts is obvious, that the labour of one man shall not be sufficient to incumber a parish with the maintenance of a numerous family. It has been determined this term in the case of *Rex* v. *Hedsor* and *Rex* v. *Hanbury*, that marriage does not dissolve the contract, if it happen during the year in which a man has been hired as a single man; to such only the benefit of the act was meant to be extended, and for this reason married persons ought to continue in the settlement acquired before marriage. If there had been a residence of forty days in *St. Giles*'s at the end of the first year, the pauper would have been well settled there; it would have been within the case of *Rex* v. *Hedsor*; but that is not the present case. The case of *Rex* v. *Croscombe* (*ante*, 400.) does not apply: 1. Because that was the case of a servant unmarried during the whole of the year. 2. Because the Court did there presume the continuance of the old contract. Here the pauper was incapable of making a new contract at the commencement of the second year: Presumption can go no further; at that time he was a married man. In this case, suppose at the end of the first year, a new agreement had been made; a service under that could not have given the pauper a settlement. Shall he then by an implied contract do that which in express and direct terms he could not do? If the original hiring were constructively to be continued throughout the second year, it might last for twenty years; and parishes might be burthened with families from whose labour they had received no benefit.

When services shall be connected, as far as marriage subsequent to the original hiring is concerned.

Rex v. *Great Chilton*, *T.* 34 *Geo.* 3. 5 *T.R.* 672. 2 *Bott*, 268. 1 *Nol. P. L.* 415. 447. The pauper, about 12 years ago, at *Martinmas*, being then unmarried, and without any child, was hired by *W. Grenwell* of *Great Chilton*, as a servant in husbandry for a year, commencing from *Martinmas*; his wages were to be about 8*l.* with meat, drink, washing, and lodging, in his master's house. He entered upon his service at *Martinmas*, and resided in his master's house in *Great Chilton*. In *January* next he married his said wife, but continued as a menial servant with *Grenwell* until *May-day* following. Some days before *May-day*, *Grenwell* and he agreed that he with his wife should go as a hind to reside on and manage another farm which *Grenwell* had in the same township; this second agreement was for a year from that *May-day*, and he was to have 5*s.* a week, the house to live in rent-free, and some other trifling perquisites as persons in that capacity usually have: And accordingly he served as a hind two years from that *May-day*, being all that time a married man. He gained no settlement afterwards. — Lord *Kenyon* C. J. This case appears to me not free from difficulty and doubt; but upon the whole, I think that the pauper gained a settlement in *Great Chilton*. To the case of *Rex* v. *St. Giles's, Reading*, *ante*, 405., I perfectly accede, but that cannot decide the present case. There the pauper was hired generally, which the law construes to be a hiring for a year, at a time when it was competent to him to acquire a settlement by hiring and service; he was then unmarried:

If there be a service for less than a year, and then the servant marry, and then make a new contract, he cannot gain a settlement by virtue of any service under this last contract. Also, during the service under a hiring for a year there be a second agreement for another year to commence immediately at different wages and for a different sort of service, it is a dissolution, and not a mere variation of the first contract.

When services shall be discontinued as relating to change of the period contracted for originally.

How far marriage operates upon connected services.

when the year expired, there was an end of the contract; by continuing in service after that time, the Court would infer a second hiring for another year: but at the end of the first year he was a married man, and was disabled from gaining a settlement by a service under a contract entered into at that time. But in the present case the pauper was unmarried when he made the first agreement; and though he married in the course of that year, it has been very properly admitted that that alone did not defeat his settlement, if he served out the remainder of the year under the original agreement made before his marriage. But it has been contended, that that contract was dissolved. I admit, that, if there were an end of the relation of master and servant when the second agreement was made, the pauper could not gain a settlement in *Great Chilton*, but I do not think that that was the case. An alteration indeed in the man's situation took place: perhaps it was more convenient for him to live with his wife in a separate house than to continue to live in his master's family, and therefore it was agreed that he should go to another farm of his master's in the same township. But that alone did not put an end to the former contract. If a master, who had kept house, and an establishment of servants, chose to break up housekeeping in the middle of the year, and to put his servants on board-wages, that would not put an end to the relation between the master and his servants, nor defeat the settlements of the latter. Then it was objected that the servant's employment after his marriage was different from that under the original contract; but I cannot discover much difference, for under both agreements he was to serve in husbandry. And even if the nature of the service were varied, that would not defeat his settlement. A footman who was converted into a butler, would gain a settlement by completing a year's service notwithstanding such a change in his station. In this case also there was a prolongation of the time of service, and he was to continue half a year beyond the period originally agreed upon; there was also an alteration of wages adapted to his change of situation: but I do not think that either of these circumstances affects the case. *The whole question turns on this, whether or not there was a dissolution of the former contract? for if there were, the second agreement was made at a time when by law, he was disabled from gaining a settlement by hiring and service.* I speak with great diffidence on this case, understanding that the majority of the Court are against my opinion. But it strikes me that there was no end of the relation of master and servant, even for a moment, during the whole time the latter continued in the service; and that as the first contract was not dissolved by the subsequent alteration of situation, the pauper gained a settlement in *Great Chilton* by serving more than a year under a yearly hiring entered into when he was an unmarried man. The case of *Rex* v. *Alton, ante*, 405., warrants this opinion, though that indeed appears to be a more doubtful case than the present; because there, under the second agreement, the pauper was to work by the piece, which seems to imply a liberty either to work or not, as he pleased. — *Ashhurst* J. At first I was inclined to think that the first contract was not absolutely dissolved, and that the second was merely a continuation and modification of it: but on further consideration, I am of opinion that the first con-

tract was entirely put an end to by the second. This is very distinguishable from *Rex* v. *Alton*, for there the principal alteration was in the terms of the contract respecting wages; the servant was to be paid by the piece instead of by the year. Whereas in this case there was a variation also in other circumstances. Under the first contract the pauper was to live in his master's house as part of his family, and was to receive the yearly wages of 8*l*. Under the new contract the terms were materially altered, the servant was to go into another farm of his master's, he was to receive weekly wages, and was to continue in service for a year from that time. After the second contract, if the master had wished to compel the servant to return to his own house, and to live in his family at the former wages, the latter might have resisted on the ground of the second contract, which shews that the former one was abandoned, and that the pauper was not serving under it. Then if the second were a new contract, distinct from the former one, the services under the two cannot be coupled for the purpose of giving the pauper a settlement, because at the time of entering into the second he was married. — *Grose* J. I agree to the *Alton* case; and here, if the original agreement had continued in force, the pauper would have gained a settlement by serving a year under it. But the question is, Whether or not there was a dissolution of the service, and of the first contract? I cannot say that the service under the second contract was a service under the first, because on comparing the two contracts together, it appears that there is a difference in the duration of the term, in the kind of service, and in the wages, the former of which is most material; and where two agreements are totally inconsistent, the second must operate as a dissolution of the first. By the first contract the pauper was hired for a year, to commence at *Martinmas;* he served under that till *May* following, when he made another agreement with his master for another year, to commence at that day. Suppose at the end of the first year the servant had said that he would no longer continue in his master's service, for that he had been serving under the first agreement only, and was not bound to serve under the second; there is no doubt but that the master might have compelled him to serve until the *May* following, by virtue of the second agreement. This shews that the second agreement put an end to the first. It is not necessary to lay so much stress on the two other instances of difference between the two contracts, the kind of service, and the quantum of wages; *I rely most on the alteration of the term of service, which I think is decisive.* — *Lawrence* J. It seems to me that in those cases no question arises respecting the benefit of any particular settlement gained by the pauper, but that the question must be considered on the facts as between the two contending parishes, because if the pauper be not settled in one, the burthen of maintaining him and his family falls on the other; and therefore there can be no bias in favour of one or the other settlement. In order to gain a settlement by hiring and service, there must be a hiring for a year, and a service for a year; and *the service for the last 40 days must be performed under a contract of hiring entered into when the pauper was unmarried.* Then the question in the present case is, whether or not there was a dissolution of the first contract? and not whether there was a discontinuance of the service; for in

When services shall be discontinued, as relating to change of the period contracted for originally.

Rex v. Great Chilton.

The service for the last forty days must be performed under a contract of hiring entered into when the pauper was unmarried.

R. v. Great Chilton.

Rex v. *St. Giles's, Reading*, the pauper continued all the time in the master's service; and there is difference in this respect, whether the contract be put an end to by flux of time or by agreement. The only way in which it can be considered that the pauper gained a settlement in *Great Chilton*, is by treating the second as a prolongation of the original contract; and it has been argued that by the second agreement the pauper was to serve until the end of the then current year, and for six months longer. But it strikes me that this is not the fair construction of the second agreement; at the end of the first six months' service the pauper did not agree to serve for six months after the end of that year, but for a year to commence at the time of the second agreement. On the whole, it appears to me that the second contract was distinct from the former one, and put an end to it, because the second was inconsistent with it; so that the pauper gained no settlement in *Great Chilton*, because the service for the last 40 days was not performed under a yearly hiring entered into when he was unmarried. Both orders quashed.

(c) Change of Master.

If the master let his farm, and the lessee enter, and the servant continue with him for the remainder of his year, it will give him a settlement.

Rex v. *Ivinghoe*, *E.* 4 *Geo.* 1. 1 *Sess. Ca.* 121. *Sett. & Rem.* 109. 1 *Stra.* 90. 2 *Bott*, 293. 1 *Nol. P. L.* 462. A person was hired for a year to one *Knight*, who rented a farm in *Ivinghoe* and lived with him half a year: the master lets the farm to one *Smith*, and the servant lives the residue of the year with *Smith* in the farm, without any words passed about dissolving the contract with *Knight*, or making any new contract with *Smith*. And at the end of the year, the second master paid him his wages. The question was, If this shall be deemed the *same service*, so as to gain a settlement? — By *Pratt* C. J. and the Court; This is a good settlement: if a master command his servant to live with another for a certain time, it is a service to the first master; and here being no new contract, it is carrying on the service of the first master. And the subsequent master paying his wages did not alter the case; for the contract not being destroyed, he might have brought an action against the first master.

So, if the servant continue with an executor for the remainder of the year.

Rex v. *Ladock*, *E.* 15 *Geo.* 2. *Burr. S. C.* 179. 2 *Bott*, 277. 1 *Nol. P. L.* 461. *John Roberts* was hired for a year in *Ladock*. His master died within the year, leaving *William Huddy* of *St. Enoder* his executor. The executor asked the servant, if he was willing to serve out the year with him. The servant agreed to it, and did serve the executor in *St. Enoder*, during the remainder of the year. — By the Court: This is a continuance of the same service; the contract was not dissolved by the death of the master; and the servant gained a settlement in *St. Enoder*. And this is a stronger case than that of *Ivinghoe*, *supra*, the assignee of the farm in that case being a mere stranger; whereas this was the case of an executor, on whom the law casts a privity of contract.

(d) Of Dispensation.

If a servant absent himself be-

Rex v. *Islip*, *E.* 7 *Geo.* 1. *Sett. & Rem.* 129. 1 *Stra.* 423. 2 *Bott*, 300. 1 *Nol. P. L.* 391. 406, 407. 410. A person is hired for a year;

and in the year's service his master gave him leave to go and see his mother for one day, and he tarried three days, and then came home again, and his master took him into his service as before. It was objected, that his staying to see his mother without leave was a desertion of the service, and the time he stayed away took so much off from a complete service for a year.— But by the Court: This will not prevent the settlement; for the master's taking him again is a purgation of the offence, and no interruption of his service.—In the same case it was stated, that the servant for six days was sick, and incapable of any service; and it was objected, that therefore he could not gain a settlement, which is to be acquired only by a service for a year; but here he did not serve for six days, and so there wants so much of a service for a year.— But by the Court: A servant that lies thus under the visitation of God, which befals him not through his own default, is and must be taken to be all the while in the service of his master; and if this exception were to be allowed it might prevent all the settlements in the kingdom.— Another circumstance in the same case was this: the servant three or four days before his service expired, desired leave of his master to go to a fair to hire himself into another service. His master refused, and told him, if he went, he should not come into his house again. The servant went notwithstanding; and did not return until the time of his service was expired.— By the Court: This is nevertheless a settlement. The request of the servant is a reasonable request; and the law will not suffer a master to shew himself so inhuman to his servant. A master cannot turn off his servant two or three days before the year expires: if he doth, the service in point of law continues, and he gains a settlement notwithstanding. At the end of the year the master deducted for the time the servant was sick, and for the time he went to his mother, and the servant allowed the deductions. The master also abated for the three last days, but the servant refused to allow it: the master, however, refusing to pay, the servant took the rest of his wages. See *Rex* v. *East Shefford*, *post*, page 411., as to the first point.

Dispensation: absence occasioned by the act of the servant.

yond his master's leave, and his master receive him again, it is no interruption.

A servant while ill is still under the service of his master.

A servant who absents himself for a reasonable cause at the end of his service, and against his master's leave, may nevertheless gain a settlement.

Rex v. *Polesworth*, *E.* 59 *Geo.* 3. 2 *B.* & *A.* 483. 1 *Nol. P.L.* 423. 427. Removal from the parish of *Kingsbury* in the county of *Warwick* to the parish of *Polesworth* in the same county. The sessions, on appeal, confirmed the order, subject to the opinion of the Court of K. B. on the following Case: The pauper was hired by Mr. *Hay* of *Polesworth*, at *Polesworth* statutes, a fortnight before *Michaelmas* 1799, as waggoner's lad, at 3*l.* 10*s.* wages for a year, commencing from the day after *Fazely* fair, the *Tuesday* after *Michaelmas* day. The pauper remained in the service at *Polesworth* till a fortnight before *Michaelmas* in the following year, when he went to *Middleton* statutes, having previously asked his master's leave, who refused to let him go there. The following day the pauper asked his master what work he was to do; the master told him he might go where he had been the day before, and that he would not employ him any more. The pauper asked the master to pay his wages, and said if he did he would go. The master refused, and said he would obtain a summons, which he did; but neither of them attended the magistrate on that summons. The pauper left his master's house on the day the summons was served: two

Dispensation: absence occasioned by act of the servant.

days afterwards, the pauper called at his master's house; and the same day they both went to *Polesworth* statutes, when the pauper hired himself to a new master, from the day after the next *Fazeley* fair. On the day after *Polesworth* statutes, the pauper summoned his master before the magistrate. When before the magistrate, the pauper, in answer to a question put to him by the magistrate, said he was willing to serve his time out; but the master said he would not take him again. The magistrate, then directed the master to pay the pauper his whole wages: which the pauper took and was satisfied; and went to his grandfather's where he remained till the day after *Fazeley* fair, when he entered upon his new master's service.—After argument, *Abbott* C. J. said, It seems to me, that the Court of quarter-sessions were quite right in refusing to consider this as a case in which the contract between the parties was dissolved. There can be no dissolution without a mutual consent of the parties, or some justifiable cause of complaint on the part of the master; but here he quarrelled with the pauper without sufficient reason, for the pauper had done no more than, according to *Rex* v. *Islip*, (*ante*, 409.) he had a right to do. There was, therefore, no justifiable ground for dismissal. Then is there any mutual consent? It appears that the parties went before a magistrate, and the pauper then stated that he was willing to continue in the service: the master, however, peremptorily refused, upon which the pauper, after receiving his full wages, said, that he was satisfied; but he neither contracted nor offered to contract any other service. And I think that there is nothing in this case to shew, that if on the following day his master had ordered the pauper to return into his service, he would not have been bound so to do. *Order of sessions confirmed.*

If a servant hired for a year from Michaelmas do not come into his service till three days after Michaelmas, and is absent at different times without consent, but his master receives him again, it is a dispensation.

Rex v. *Hanbury*, *T.* 26 & 27 *Geo.* 2. *Burr. S. C.* 322. 2 *Bott*, 307. 1 *Nol. P. L.* 410. The servant was hired for a year at *Michaelmas*, but did not come to his service till three days after *Michaelmas* day, and served till the day after *Michaelmas* in the next year. He was absent about two or three days at a time, in the whole a fortnight, without consent, but was always received again. At going away, he agreed to make a deduction of 6*s.* 6*d.* of his wages, for the time he was absent.—By the Court: He gained a settlement by this service. This Court has not been so strict in determining upon the service, as upon the hiring. It has often been held, that though a servant has been absent for a time, yet his master taking him again purges his absence. And there is no difference between an absence in the beginning and in the middle of the service; for he is a servant from the time of hiring.

If a yearly servant run away from his master and be absent for thirteen weeks, and then his master apprehend him, and give him leave to come back; deducting a sum for

Rex v. *East Shefford*, *T.* 32 *Geo.* 3. 4 *T. R.* 804. 2 *Bott*, 335. 1 *Nol. P. L.* 394. The pauper was hired by one *Birch* of *Welford* for a year, at four guineas wages; he accordingly went to his service on the day appointed, and continued there eight weeks, when he ran away, and was absent thirteen weeks, during which time he worked with and received wages from another person. *Birch* then apprehended him by a warrant; but in his way to a justice, asked him whether he would come back to his place or go to prison? and if he would come back, and go on in his place as he ought to do, he might. The pauper said, he

Dispensation: absence originating in illness of the servant.

the time of absence, it is a dispensation.

would come back; and his master asked him then, what he should be willing to abate for the time he had been absent? The pauper said, he thought 1*s.* a-week would not hurt him, which was agreed to; and the pauper returned into his service, and continued till the end of his year, when he received all his wages, except the 13*s.* which had been agreed to be deducted.— Ld. *Kenyon* C. J. If the old contract were dissolved when the servant absented himself, and a new one entered into on his return, I agree that the pauper could not gain a settlement by serving under it. And therefore the question is, Whether the service after the pauper's return were performed under the old or new contract? This is one of the many cases in which we have to regret that the words of the statute have been departed from: but as there is a series of adjudged cases, the principle of which applies to the present, it is too much for us to overturn them; though if the question were now to arise for the first time, perhaps we should make a different determination. It has been decided that absence at the beginning, the middle, or the end of the year, may be dispensed with, either with the consent of the master or for an excusable cause. In *Rex* v. *Hanbury*, (page 411.) it was held, that an absence for a fortnight did not defeat the settlement, though the wages were deducted for that time. Now it is impossible to distinguish this case from that in principle. It has been said, however, that the absence in that case was for a shorter period than in the present: but I wish that those who used such an argument would have drawn the line, and given us the *ne plus ultra*. Probably if the first case after the statute had arisen upon an absence of thirteen weeks, the Court would have started at the question; but the Court have gone on step by step, and having held that service for a fortnight may be dispensed with, I think we are bound by the principle of those cases to say, that this pauper gained a settlement at *Welford* by hiring and service; for on his return he was received again into his master's service, where he continued under the old contract. There is no pretence to say that he entered into a new contract; and the master's object in apprehending him by a warrant was to compel him to complete the service under the old contract. — *Buller* and *Grose* Js. of the same opinion.

If a servant at her master's instance go from his family on account of illness, to the hospital, and her mistress give her the remainder of her wages, and she never returns, it is a dispensation.

Illness is not such an interruption as to prevent a settlement.

Rex v. *Christchurch*, *E.* 33 *Geo.* 2. *Burr.* *S. C.* 494. 2 *Bott*, 310. 1 *Nol. P. L.* 406. *Elizabeth Maxey* was, on the 24th day of *August*, 1757, hired into *Christchurch* for a year, and continued in the said service till the 7th of *August* then next following, when she was frightened into fits, and thereby rendered incapable of doing any service. Her master being taken ill, and disturbed by her fits, desired Mr. *Limonier*, who lived in the parish of *St. Matthew, Bethnal Green*, to take her into his house, that she might be under the care of her sister who lived there; but if Mr. *L.* refused to receive her, she was then to return to her master's house. Mr. *Limonier* took her in; and she resided there about five days, and then was taken into the hospital. The day after she had been received into Mr. *L.*'s house, she returned to her said master's house to fetch away her clothes, and her mistress gave her two shillings, which, with what she had before received, made up the full year's wages. No words of discharge passed between her and her mistress; but

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she looked upon herself as then discharged from her service; but believed that had she recovered her health, her master would have received her again into his service. *She continued under the same indisposition till after the year from the said time of hiring was expired*, and never returned again into her said master's service. And on the 17th of *August*, 1758, her master hired another servant in her place. — By Ld. *Mansfield* C. J. This is certainly a fair *bonâ fide* service for a year, without any fraud on either side. If a master give his servant leave to go upon any other service, or to be absent for a short time, and pay him his whole wages, this is a good service. If the servant be taken ill, by the visitation of God, it is a condition incident to humanity, and is implied in all contracts. Therefore the master is bound to provide for and take care of the servant so taken ill in his service; and cannot deduct wages in proportion to the continuance of the servant's sickness. And there is no difference, whether the accident of sickness happen in the middle or at the end of the year. It is equally the act of God, and without any fault of the servant. And in the present case, the servant's being at Mr. *Lemonier*'s, or in the hospital, is just the same thing as her being kept in the master's house, under his own roof. [See *Rex* v. *Islip*, *ante*, p.410. and *Rex* v. *Sudbrooke*, *post*, p.431., as to illness.]

Rex v. *Sharrington*, *M.* 25 *Geo.* 3. 2 *Bott*, 322. 1 *Nol. P. L.* 406, 407. The pauper, being legally settled in *Sharrington*, hired himself before *Michaelmas*, 1782, for a year to Mr. *Hardy*, brewer, at *Letheringsett*, to drive a team, and do whatever he was bid. He was employed occasionally in husbandry, and after having lived with his master seven weeks, as he was driving the beer waggon, being in liquor, he fell off the shafts, and broke his thigh. He was carried by the officers of the parish where the accident happened to the *Norwich Hospital*, where he continued twenty-nine weeks. On quitting the hospital he returned to Mr. *Hardy*, who refused to receive him, offering to pay him for the seven weeks, and to make him a present; which the pauper refused. He then went to *Sharrington*, and continued fourteen weeks, and then by an order of two justices on the 30th *September*, 1783, he was sent to Mr. *Hardy*, who then also refused to receive him. The pauper continued in *Letheringsett* at a public-house, and was after some time removed by an order of two justices to *Sharrington*. He did no work for *Hardy* after he came out of the hospital, but was, and continued incapable of work. The sessions confirmed the order of removal to *Sharrington*. No counsel appeared to shew cause, and the Court being of opinion that a settlement was gained by this service, at *Letheringsett*, made the rule absolute. Order quashed.

Absence at the end of the service on account of illness, is no dissolution, although the master deduct a sum from the wages on that account.

Rex v. *Maddington*, *H.* 11 *Geo.* 3. *Burr. S. C.* 675. 2 *Bott*, 312. 1 *Nol. P.L.* 391. 406. *n.* Removal from *Maddington* to *Wilsford*. The pauper, being hired for a year from *Michaelmas*, continued in his service till about three weeks before the next *Michaelmas*, when having been kicked by one of his master's horses, he went home to his friends, about five miles off, without his master's knowledge or asking his leave, to cure his leg; and continued there during the remainder of the year, and never returned to his master, except for his wages, some short time after *Michaelmas*; when he was paid the whole, except 6s., which

the master deducted on account of the said absence; which the pauper consented to. — The Court were of opinion, that the servant gained a settlement by the service here stated. And they thought it to be within the reason of the determination of the *Islip* case. Here, the cause of his going home to his friends, clearly and fully appears to have been to cure his leg, which had been hurt in his master's service, and by a kick from his master's horse. This was a reasonable cause of absence. It did not dissolve the contract, nor hinder his gaining a settlement; and the master ought not to have deducted any part of his wages.

Dispensation: absence originating in illness of the servant.

Rex v. *Wintersett*, *E.* 23 *Geo.* 3. *Cald.* 298. 2 *Bott*, 263. 1 *Nol. P. L.* 407. 415. 424. 460. The pauper was hired at *Barnsley* statutes, which are held a few days before *Martinmas*, to *Thomas Oundsworth* of *Stainburgh* for one year, received 1*s.* for his godspenny, and was to have three guineas wages; the very night of the hiring the pauper *fell ill*, and continued sick and unable to go, and *did not go into his service till a month* after *Martinmas;* when the pauper and his mother went to the master's house, who being from home, they were shewn to his wife, who complained that the pauper had not come to his service according to the agreement, and *therefore refused to receive him:* whereupon the pauper's mother said, "*we must fall into your will for wages, and take what you will allow us;*" and left the pauper in his service, where he continued until *Martinmas* following; when the mother was sent for, and received for forty-eight weeks' wages after the rate of 1*s.* 2*d. per* week; being *less than the rate of the original wages.* — By Ld. *Mansfield* C. J. The service had never commenced under the first contract, if it had, no doubt the master must have supported him in his sickness. But that is not the question; the point is, that the agreement acted upon here was a fresh agreement, when he recovered from his sickness; and the beginning of his service was then. Under the former the mistress refused to receive him. Then considering the old contract at an end, *the actual service* was but for eleven months; that is, to the *Martinmas* next; and the submitting to the abatement of the month's wages at the end of the year is an affirmance of the agreement made by his mother; and this, as rescinding the original agreement, destroys more than the *legal or constructive service;* it shews also that there was no hiring for a year; so that both the hiring and service must be considered as imperfect and ineffectual. — *Buller* J. If a servant be taken ill, after the service has commenced, the master is bound so support him and cannot turn him away on that account. But it is not true, that the service began under the first contract. That was executory. It was made some days before *Martinmas* to commence at *Martinmas;* and in fact it never commenced. When the pauper went, they made a new contract, and under that his service commenced.

If a person be hired for a year, and be prevented by illness from entering upon his service at the time agreed upon, and upon going to his place his master refuse to receive him, and then he continue there, agreeing to take what he should be allowed, the service only commences at the second agreement.

Rex v. *St. Bartholomew, Cornhill*, *E.* 18 *Geo.* 3. *Cald.* 48. 2 *Bott*, 318. 1 *Nol. P. L.* 403. The pauper, *Ursula Owen* was hired for a year by Mr. *Heshuysen* on 11th of *June*, 1771: in *April* following, her master told all his servants that he was going to live at *Manchester*, but did not know the time; and that they might look out for services, or stay with him until he went, as they chose: the pauper continued with her said master in the parish of *St. B.* aforesaid, till the 4th of *June* fol-

If the master leave his home accidentally, before the servan's year is end.d, and pay her the whole year's wages, and something over, and the

Dispensation: absence originating in the act of the master.

servant two days after enter another service, it is still a dispensation.

lowing, when her master paid her the whole year's wages, and half a guinea over, and that same day he left *London*. His going that day was quite a casual matter, and if he had remained in *London*, he would have continued the pauper in his service, as she was a good servant. The pauper went into a new service two days after her master left *London*.—By Ld. *Mansfield* C.J. and the Court; The only question is, whether the servant continued *bonâ fide* in her service during the whole year? To be sure there is a distinction between exceptions, from the contract originally, or subsequent dissolution and dispensation of the service; but if the case be of the latter description and *bonâ fide*, it can make no difference when the servant is engaged or where; or whether the service be in the same, or another occupation: she quitted her service at the desire of her master, and received half-a-guinea beyond her wages, as an equivalent no doubt for her board. It was accidental, and a favour to her master. The case of *Rex* v. *Richmond* is full as strong as this, for there a new servant came into the very place. Fraud vitiates every thing; but the justice as well as reason of the thing are here with the settlement. Suppose she had come from a distant country, and had no other settlement, shall she lose her only one which she deserves so well?

If the master become a bankrupt, and the messengers take possession of the house, and the mistress discharge the servant, paying the whole year's wages, it is a dispensation.

Rex v. *St. Andrew's Holborn*, *T.* 28 *Geo.* 3. 2 *T. R.* 627. 2 *Bott*, 330. 1 *Nol. P. L.* 464. *Mary Robinson* was hired for a year, and continued in her service until within four or five days of the end of the year; when her master becoming bankrupt, and the messengers taking possession of the house, her mistress discharged her, paying her the whole year's wages. This case was not argued, the Court being clearly of opinion that the bankruptcy of the master did not dissolve the contract of hiring without the servant's consent; and that the pauper gained a settlement by such hiring and service.

If on account of a difference between a mistress and her servant, the former discharge the latter and pay her her full wages, which she accepts, it is a dispensation.

Rex v. *St. Philip* in *Birmingham*, *T.* 28 *Geo.* 3. 2 *T. R.* 624. 2 *Bott*, 329. 1 *Nol. P. L.* 411. *Susannah Brookes*, the pauper, was originally settled in *Birmingham*; but subsequent to her settlement there, she was hired for a year to *Elizabeth Poole*, in the parish of *Powick*, where she served until within eight days of the end of the term, when on account of some difference between them, she gave her mistress warning that she would leave her service at the end of the year. The mistress, on having hired another servant, by reason of some impatient behaviour of the pauper, discharged her and paid her the full wages, which she accepted and quitted the service, and left the parish eight days before the year ended; but she said she would have served the year if her mistress would have let her. She was removed from *Powick* to *Birmingham*, which order the sessions confirmed. —The Court thought this case distinguishable from *Rex* v. *Gresham*, (*post*, p. 423.) and more like *Rex* v. *Richmond*, (*post*, p. 420.) and that this was to be considered more as a dispensation from the service, than a dissolution of the contract, and as a mere wrongful act of the mistress in dismissing her, and which was *submitted* to, but *not agreed* to by the servant. Rule absolute. (But see *Rex* v. *Bray*, *post*. p. 419.)

If the master quit his house and tell his ser-

Rex v. *St. Mary, Lambeth*, *E.* 39 *Geo.* 3. 8 *T. R.* 236. 2 *Bott*, 343. 1 *Nol. P. L.* 405. The pauper, a single woman, being settled in *St. Martin's*, on the 15th *January*, 1797, hired

herself to one *J. Serle* of *St. Paul, Covent-Garden,* for a year, from the 18th of that month, at seven guineas wages. She went into his service on the 18th of *January* and remained until the 11th of *January* following, when an information having been laid against her master for keeping a gaming-house, he quitted his house, and told his servants (and the pauper amongst them) that he had no longer any occasion for their services, and then paid the pauper her whole year's wages. He would have kept the pauper, but on account of his being obliged to quit his house, and the pauper was unwilling to leave his service. She then went to her sister, and did not engage herself in any other service until after the year expired, though from the time that her wages were paid, she considered herself at liberty to go where she pleased.—Ld. *Kenyon* C. J. If this point were not encumbered with decisions, and we were to resort to the very words of the act of parliament, on which the question arises, I should perhaps yield to the argument of the counsel in support of the rule. Or if the cases cited by them proved the point for which they were cited, I should be strongly inclined to adopt them on this occasion. But it has been frequently said here, that it is of great importance that decided cases should be adhered to; and on this subject in particular I applaud the rule *stare decisis*. The cases cited by the counsel on both sides are nine in number; and though they approach each other very nearly, there is a line of distinction between the four (*Rex* v. *Richmond, Rex* v. *Bartholomew, Rex* v. *St. Philip Birmingham, Rex* v. *Holborn,*) that were relied upon by the one side, and the five (*Rex* v. *Castlechurch, Rex* v. *Gresham, Rex* v. *Grantham, Rex* v. *Clayhydon, Rex* v. *Whittlebury,*) on the other. I cannot distinguish the present case from the four that were cited in support of the order of sessions; and it was decided in each of those, that it was a dispensation with the service, and not a dissolution of the contract. Perhaps I should have had some difficulty in saying, in some of those cases, that it was only a dispensation with the service; but it is sufficient to say, that those cases were so decided, and having been so determined they ought not now to be shaken. But the cases cited on the other side are distinguishable from those, "because in them the contract was dissolved by the mutual consent of both parties." The distinction between the different sets of cases is certainly a very nice one, but I think that this case must be governed by the four to which I just now alluded; and if this be a question of evidence, it appears that the sessions by their determination have "impliedly found that the parties did not consent to dissolve" the contract. —Order of sessions confirmed.

Dispensation—absence originating in the act of the master.

If a master tell his servants he has no longer any occasion for their services and pay the full year's wages, it is a dispensation.

Eastland v. *Westhorsley,* T. 8 *Geo.* 1. 1 *Stra.* 526. 2 *Bott,* 302. 1 *Nol. P. L.* 409. A servant was hired for a year; and the day before the year expired, the master told him, that to prevent his gaining a settlement in that parish, he should go away immediately; which the servant refused to do, insisting to serve out the year; whereupon the master turned him out of doors.—The Court held this to be such a fraud in the master, as should not prevent the settlement of the servant. (*See the case of North Basham, post.*)

If a master turn away his servant to prevent his gaining a settlement; it is a fraud, and the settlement will not be defeated.

Rex v. *Frome Selwood,* T. 6 *Geo.* 3. *Burr. S. C.* 565. 2 *Bott,* 312. 1 *Nol. P. L.* 412. *Richard Stent* the husband of the pau-

A quitting the service because

Dispensation: absence originating in the act of the master.

the pauper wished to be settled elsewhere is fraudulent, and amounts only to a dispensation.

If after a person is hired for a year, the master tell him, 'he shall go away a fortnight at Michaelmas because of his settlement,' and at the year's end pay him a year's wages, it is a dispensation, and not a dissolution.

per, was hired for a year at *King's Weston*, and served that year till within ten days of the end of the year, when *Stent* declaring to his master that he wished not to be settled in *King's Weston*, asked his leave to go and visit his relations; to which the master consented. After the year was expired *Stent* returned to his master, and then hired himself as a day-labourer, and as such continued with him three months. On making up their accounts, *Stent* allowed out of his daily wages for the days he had been absent in the preceding year. The Court held the settlement to be in *King's Weston*, looking upon the leave and consent of the master as fraudulent, and a mere evasion of the settlement.

Rex v. *Sulgrave*, *E.* 28 *Geo.* 3. 2 *T.R.* 376. 2 *Bott*. 326. 1 *Nol. P.L.* 399. 411. 421. The pauper, *Daniel Plester*, being settled in *Sulgrave*, was hired in *February* to Mr. *Howes* of *Stouchbury*, till *Old Michaelmas* following, and served him accordingly. On the *Friday* before *Old Michaelmas*, his master asked him if he would stay again; the pauper said he would if they could agree about wages, and asked five guineas, which the master thought too much. The pauper immediately went away, and having gone about ten yards, returned for something he had forgotten: he then met his master again, who said he would give him the five guineas, and gave him one shilling earnest. The master, while he was putting his hand into his pocket for the shilling, said, you shall go away a fortnight at *Michaelmas*, because of your settlement, and I will give you that fortnight to get what you can; to which the pauper agreed, and he accordingly went to his father's and stayed a fortnight, during which time he worked for Mr. *Chester*, in digging sand on Mr. *Howes*'s land, and received from Mr. *Chester* one shilling a-day, and once or twice during the fortnight he ate at Mr. *Howes*'s. At the end of the fortnight he went to Mr. *Howes*'s, and continued to serve him at *Stouchbury* till *Lady-day*, when Mr. *Howes* removed, and the pauper with him, to *Culworth*. Mr. *Howes* soon after died, and the pauper continued to serve Mrs. *Howes* in *Culworth*, till the time when he left her, and he then received his wages up to that time: and he believes there was nothing deducted for the fortnight, but he does not remember what sum he received. The pauper apprehended that his master would not have hired him if he had not agreed to go away for a fortnight.—*Ashhurst* J. The rule established in these kinds of cases is this: "where there is a *bonâ fide* exception of part of the time at the *time* of the hiring, that is not a hiring for a year; but if there be no exception at the time of making the original contract, then a permissive absence is considered as a dispensation of part of the service by the master;" and it does not operate in the same way as an exception out of the original contract, which defeats the settlement. And the question, whether it be one or the other, must depend upon the particular circumstances of each case. In this case there was a complete hiring for a year at the time. The parties having disagreed on the terms proposed, the pauper went away, but on his return his master said he would give him the five guineas, which he agreed to accept, and gave him one shilling earnest. It is likewise stated, that while the master was putting his hand into his pocket, he told the pauper he should go away for a fortnight: *but the contract was complete before that time*, and what passed afterwards can

Rule.

Earnest.

only be considered as a dispensation with the service; for at that time the master had a complete right to his service for a year, and the pauper had agreed to serve him for that time, and the shilling earnest was to bind the agreement for a year for five guineas; otherwise it appears to be giving the servant more than he originally asked for the whole year for serving him for a shorter period. *If then the contract were complete before any thing was said relative to the fortnight's absence, this was a dispensation with the service, and not an exception out of the original contract.* An exception is a stipulation on the part of the person for whose benefit it is introduced; but here it was not made on the request of the servant, but on the offer of the master; and it appears that he said, that it was for the express purpose of preventing the pauper's gaining a settlement. That is not such a reason as the Court would give much countenance to. Whether indeed the sessions might not have determined this on the ground of fraud was for their consideration, as it is, there is no occasion to go into that ground, as we are of opinion this was a dispensation with the service. With respect to the servant's apprehension, which is stated in the case, that cannot vary the case: we are to decide on the terms of the contract, and not on the apprehension of the pauper.

Dispensation for absence originating in the act of the master.

What is an exception.

Rex v. *Hardhorn with Newton*, *H.* 50 *Geo.* 3. 12 *East*, 51. *Bott*, *Cont.* 144. 1 *Nol. P.L.* 409. Removal of *Margaret Lingard* from the township of *Newton with Seales* to the township of *Hardhorn with Newton*, in the county of *Lancaster;* confirmed by the sessions. The pauper was hired by *R. Gratrise*, in *Hardhorn* for a year. Three weeks after the beginning of the year 1769, the pauper's master died, and the farm was continued by his widow, and two sons, *George* and *William*. About three weeks before the end of the year the pauper fell out with *George*, one of the sons, about her work, because she threw more sand upon the floor than he deemed necessary, and was by him turned out of doors, though she was willing to stay. The next day she came again for her clothes, when *George* paid her 4*l.* 10*s.* as for her full wages. There was a dispute about the amount of her wages, *George* insisting that the pauper was hired for 4*l.* 10*s.* and she demanding 5*l.* 15*s.* The pauper, however, accepted 4*l.* 10*s.* and never got any thing more, though she employed an attorney for that purpose. The pauper, when she came the next day for her clothes, offered to stay to the end of the year, but *George* would not let her. After argument, Ld. *Ellenborough* C. J. said, there must be an abiding in the service for a whole year, in order to confer a settlement; as far as lay in the pauper there was such; but she was wrongfully and forcibly turned out of doors by her master against her will, and when she returned the next day for her clothes, he gave her 4*l.* 10*s.* which he said was the whole of her wages: but she did not assent to that, but demanded more, though she took what he was willing to give her in part, and offered to stay to the end of the year, maintaining her right to her full wages. She, therefore, did all she could to abide in the service, according to her contract, and did so, except so far as she was prevented by an act of force. And he distinguished between this and the case of *Rex* v. *Grantham*. The servant having there been improperly turned out of doors by his master, in the

Where the master died three weeks after hiring the pauper for a year, the latter, abiding in the service with the widow and sons to the end of the year, gains a settlement in the parish where she served: and it is no less an abiding in the service for a year, because one of the sons, on the frivolous pretence that the servant threw more sand on the floor than he deemed necessary, turned her out of doors three weeks before the end of the year: she being willing and offering to stay to the end of the year, but carrying away her clothes the next day and taking what the son insisted was

Dispensation: absence originating in the act of the master.

first instance, took him at his word, and refused to return to his service, though invited by his master so to do; and when the master at last agreed to pay him his full wages, he left the service contrary to the express request of the master to stay.— *Grose* J. agreed, and said that the servant's tendering herself to perform the service, was equivalent to the performance of it in law.— *Le Blanc* J. agreed, and mentioned, that the pauper did not here, as in *Rex* v. *Leigh*, *post*, 437. hire herself into another service before the end of the year, which was there held to be a dissolution of the contract.— *Bayley* J. agreed. Order of sessions confirmed.

her full wages for the year, according to the agreement, though she demanded a larger sum as her full wages.

Absence on the master's account and request.

Rex v. *Market Bosworth*, *H.* 5 *Geo.* 4. *MSS. B.* & *C.* Absente *Abbott* C. J. 1 *Nol. P. L.* 399. The pauper lived with Mrs. *W.* until *Old Michaelmas day*, 1822. She asked to have her week just before *Christmas*, Mrs. *W.* said, "You shall have three or four days now, I cannot spare you the whole week." She staid away three successive days and nights, and had the other four days at different times during the year, returning on each of them to sleep at her mistress's, and her mistress gave her two or three holidays besides; she never was absent without her mistress's permission, and always returned into the service, and at the end of the year received her wages.— *Bayley* J. The question in this case ought to have been decided by the court of quarter sessions, but inasmuch as great expence has been incurred we will pronounce our judgment upon the facts stated in the case. I am of opinion that a settlement was gained in *M. B.* It appears that three weeks before *Old Michaelmas*, the mistress asked the pauper to stay again, to which she replied, that she had no objection, if they could agree about wages; they did agree for 3*l.* 10*s.* and one shilling earnest was paid; now it is quite clear that that constituted a general hiring for a year. and the question is, whether the subsequent conversation between the mistress and the servant amounted to an alteration of the original bargain, so as to convert that which had been a hiring for a year into a hiring for 51 weeks only, or whether it was a dispensation by the mistress with one week's service: now it is laid down in Mr. *Nolan's Treatise on the Poor Laws* as a general rule, that where the absence of the servant takes place on the master's account and at his request, the courts have been inclined to infer a dispensation, inasmuch as the absence originates with him in whom the power of dispensation is vested, and is only acquiesced in by the servant. Apply that rule to the present case; there having been a general hiring for a year, the mistress afterwards states to the servant that she had hired her, but that she had mentioned no time, and desires her to remember that she was hired for 51 weeks. The servant made no overture to the mistress for a change of the original agreement. According to the above rule, therefore, this ought to be construed to be a dispensation. The mistress acknowledges there had been a hiring, and if this was intended as an explanation of the original agreement it was a false one; for in the first instance there was an hiring for a year at an entire sum of 3*l.* 10*s.* and there is no stipulation afterwards that the pauper was to be paid wages for 51 weeks, at the rate of 3*l.* 10*s.* for the whole year; I think, therefore, that there was no alteration of the original bargain, but that there was a dispensation of the service

of the pauper for one week. I think that the sessions w[ere] warranted in considering this a case of dispensation or fraud. I cannot distinguish this from the case of *Rex* v. *Sulgrave*, 2 *T. R.* 376. There the pauper was hired in *February*, to serve till *Old Michaelmas;* on the *Friday* before *Old Michaelmas*, his master asked him if he would stay again; the pauper said he would if they could agree about wages, and asked five guineas, which the master thought too much. Afterwards, the master said he would give him five guineas, and he gave him one shilling in earnest; but while he was putting his hand in his pocket for the shilling, he said you shall go away a fortnight before *Michaelmas* because of your settlement, and that he would give him that time to get what he could, to which the servant assented. It was held that this was a mere dispensation with service for that time, and not such an exception out of the original contract as would make the hiring insufficient for the purpose of gaining a settlement; and *Ashhurst* J., in delivering his judgment, said, that the contract was complete before any thing was said relative to the fortnight's absence, and that this was a dispensation with the service and not an exception out of the original contract. An exception is a stipulation on the part of the person for whose benefit it is introduced, but here it was not made at the request of the servant, but on the offer of the master. Upon the authority of this case, as well as upon general principles, I am of opinion, that the sessions were warranted upon their part in coming to the conclusion that there was a hiring for a year, and that there was no exception in the contract of hiring, but a mere dispensation by the mistress with one week's service. I think therefore, that the order of sessions ought to be confirmed. Order of sessions confirmed.

Dispensation: absence originating in the act of the master.

Rex v. *Potter Heigham*, *T.* 11 *Geo.* 3. *Burr. S. C.* 690. 2 *Bott*, 316. 1 *Nol. P. L.* 407, 408. 412. A servant, hired for a year, continued till the day before the end of his year; when he desired his master to discharge him; telling his master, that as he had hired himself for the next year to a person in a distant place, he wished to pass that day with his friends; and requested to have that time to himself, to spend with them. To which the master consented. And he was accordingly discharged; and then received the whole of his wages, except sixpence, which he allowed to his master for that day. — This was holden not to be a dissolution of the contract, but an absence by leave of the master. And it was adjudged, that the servant by this service gained a settlement.

If a servant on the last day of his year desire his master to discharge him that he may go and see his friends, and his master therefore do so, deducting sixpence for that day, it is a dispensation.

Rex v. *Bray*, *T.* 11 *Geo.* 3. *Burr. S. C.* 682. 2 *Bott*, 315. 1 *Nol. P. L.* 393. On *Thursday* before *Michaelmas-day*, 1767, which happened on a *Saturday*, *John Hunt* was hired for a year to *John Lee*, of the parish of *Bray*, farmer, as a carter, to go into his service on the *Monday* following, until *Michaelmas*, 1768, for six guineas. At the time of the agreement *Lee* desired him to go into his esrvice before *Monday*, but *Hunt* said it would not suit him, as he was then in service, and *Lee* replied, that if he would come into his service on the said *Monday* morning, he would shift all that time. He went into his service on the *Monday* accordingly: *Michaelmas-day* was on the *Saturday* next after the *Thursday* on which he made the agreement. At the time of the agreement the pauper was in the service of *John Lewis* of *South*

Hiring from Saturday, master desired pauper to go into service before Monday.

Dispensation: absence originating in the servant's request.

Stock, under a contract which expired on *Michaelmas-day*, 1767, which service he left on the night of the *Michaelmas-day*, 1767. He continued in the service of *John Lee* till the day before *Michaelmas-day*, 1768, when he desired leave of his master to go to see his relations before he went to another service; his master deducted one shilling from his wages for that day, and paid him the residue; he then went away and returned no more into the service of *Lee*, who, on the pauper's going away, told him that if he quitted the service before *Michaelmas-day*, there might be a dispute about his settlement, and desired him to come back. Ld. *Mansfield* C. J. This is a hiring for a year, with a dispensation of the first day. The pauper thought he had his masters leave the last day, and had allowed a shilling for it, which is more than one day's wages. Both master and servant were clear that at the end of the year, there was only an absence of one day, and at the beginning of the year the pauper had his master's leave for being absent the first day. Both master and servant meant it as a settlement. And the orders removing the pauper from *Sherfield* to *Bray* were affirmed.

If the master give the servant leave to go thirteen days before the expiration of his year, and pay him his full wages, it is a dispensation.

Rex v. *Richmond*, *E.* 13 *Geo.* 3. *Burr. S. C.* 740. 2 *Bott*, 316. 1 *Nol. P. L.* 402. The pauper, *William Springall*, was hired for a year to *Alexander Crawford*, Esq. of *Richmond*, on the 30th of *October*, to serve till the 30th of *October* following. Before the expiration of the year, namely, on the 4th of *September*, the pauper married a fellow-servant. The said fellow-servant had given a month's warning in *August* preceding to quit the service, and was to quit it in *September*, in consequence of such warning; but was desired by her master to stay till the 17th of *October*, which she did: and then the master said to *Springall* (the husband) that he supposed, as his wife was going away, he (the husband) would like to do so too. The husband replied he should like it better, if it was agreeable to the master. His master said he had no objection, as he had another footman coming, and would pay him his whole year's wages: which he accordingly did on the said 17th in full to the 30th. On which said 17th of *October*, both the husband and the wife left the service. It was objected, that the pauper did not gain a settlement by serving for a year, because he left the service thirteen days before the expiration of his year. The act of parliament is express, that no such person so hired as aforesaid shall be adjudged to have a good settlement in any such parish or township, unless such person shall *continue and abide* in the same service during the space of one whole year.—By Ld. *Mansfield* C. J. (with whom the other judges concurred): There is no necessity of an actual service upon every day of the year. The master can always dispense with it. He can give leave of absence. Nay, if the servant is absent without leave, in the middle part of his year, such absence may be purged, as it has been termed, by the master receiving him again; that is, the subsequent consent of the master ratifies the act done. I am clearly of opinion, that the servant has in the present case sufficiently served his whole year. The master voluntarily gave him leave of absence for the last thirteen days; and, of his own accord, paid him the whole year's wages.

If he absent himself, with

Rex v. *Nether Heyford*, *E.* 32 *Geo.* 2. *Burr. S. C.* 479.

2 *Bott*, 309. 1 *Nol. P. L.* 395. It was stated, that *John Gare*, the pauper, was hired for a year, to widow *Bliss* of *Farthingstone*; and continued in her service until five weeks before the end of the year; when, with his mistress's leave, he parted with her and went to work at *Kislingbury*, and staid there the said five weeks. After the end of the year, the said *Gare* went to his said mistress *Bliss* for his year's wages; the whole whereof she laid down to him, and he thereout voluntarily deducted 10*s*. for his five weeks' absence, being the same sum he had earned and received for his five weeks at *Kislingbury*. The original contract was not dissolved, nor any new one made with his mistress *Bliss*, save as aforesaid. And if his mistress had, during the said five weeks, required him to return to her, he would have done so. It was objected, that this could not be a settlement, as there wanted five weeks of the service. By Ld. *Mansfield* C.J. and the Court: The question turns singly upon this, whether his absence for five weeks was a dissolution of the contract? If he had his mistress's leave, it was not; if he had it not, it was. And we are all of opinion, that it was only an absence with leave. For it appears, that both parties considered the contract between them as subsisting, and not dissolved. He paid her the whole that he had earned in the five weeks that he was absent, considering himself as her servant during that time. For otherwise the deduction would not have been a deduction of the particular sum earned by him, but a deduction in proportion of his whole year's wages to the time of his absence. And he looked upon himself as liable to be called back within the five weeks. And it is stated, that the original contract was not dissolved, save as aforesaid. Therefore we are all of opinion, that the contract was not dissolved, and consequently that the pauper gained a settlement with his mistress, *Bliss*, at *Farthingstone*.

Dispensation: absence originating in the servant's request.

his mistress's leave, for the last five weeks of his service, and at the end thereof pay he the whole sum earned by him during the time it is a dispensation.

Rex v. *Goodnestone*, *T.* 19 *Geo.* 2. 2 *Stra.* 1232. *Burr. S. C.* 251. 2 *Bott*, 305. 1 *Nol. P. L.* 394. *William Markham* was hired for a year, and lived with and served his master in *Northbourne* till within three weeks of the end of the year, when he asked leave of his master to go to the herring fishery. The master consented if he could get a man to do the master's work to his liking. *Markham* did so, and paid the man. *Markham* went to sea, and returned at the end of the herring fishery, which was about three weeks after the end of his year. The master paid him all his year's wages. By the Court: this was no dissolution of the contract; *Markham* gained a settlement at *Northbourne*; and as the master had the benefit of the contract during the whole year, so ought the servant also. See this case cited by Ld. *Mansfield* (*ante*).

If a yearly servant with the consent of his master procure another person to take his place for a time paying him himself, and receive from his master his whole year's wages, it is a dispensation.

Rex v. *Beccles*, *E.* 17 *Geo.* 2. 2 *Stra.* 1207. *Burr. S. C.* 230. 2 *Bott*, 294. 1 *Nol. P. L.* 396. 462. A person was hired to a blacksmith for a year at 3*l*. a-year. During the year the master gave him leave to work with another smith for three days, with another for a week, and with another for a fortnight, and agreed that the servant should have the advantage of it. After which he returned and staid out the year, and the master by his consent deducted the proportion of wages for the time he was away. The sessions held no settlement was gained, the first contract being dissolved.—But by the Court; the order

Service with other masters by the first master's consent, he taking him again, is service under a dispensation.

must be quashed; for this is not a dissolution of the contract, but a licence to be absent. Service by the master's consent with another person is service of the master. But in this case, if it had been without the master's consent, yet the absence had been dispensed with by the master's taking him again.

Where a yearly servant on complaint of master was committed to the house of correction, and after nine days' confinement, was discharged on the master's application, and returned to his service, and served out the year; Held that the commitment and imprisonment did not operate a dissolution of the contract.

Rex v. *Barton-upon-Irwell*, *H.* 54 *Geo.* 3. 2 *M.* & *S.* 329. *Bott. Cont.* 150. Removal from *Pendleton* to *Barton-upon-Irwell.* Order confirmed, subject, &c. The pauper, *J. Edwards*, having gained a settlement by hiring and service in *Barton-upon-Irwell*, and being unmarried, was hired for a year as a servant to one *Watkins* of *Great Lever*, whom he served for about nineteen months there. After having been in that service about two months, being then married, he was taken before a magistrate on the complaint of his master, and committed to the house of correction for one month. When he had been in custody nine days, at the instance of his master he obtained a discharge from his imprisonment, returned immediately to *Great Lever*, and served him as before. On such return no mention was made of the terms on which he was to serve. He received no wages for the time he was in custody. The case then set forth the warrant of commitment, by which it appeared that the pauper had been charged upon the oath of *Watkins* (his master) with divers misdemeanors, and not acting in his service as a servant ought to do, and particularly in using a horse of his master's in a cruel and inhuman manner, and also with disobeying and neglecting the orders of his master, contrary to the statute: that the justice had convicted him of the offence so charged against him, and had sentenced him to be imprisoned in the house of correction, and there kept to hard labour for one month. After argument, Lord *Ellenborough* C. J. said, It would be clearly against the policy of the law, if the servant by his own act of delinquency should have the power of dissolving the contract. The justices have that power, but they have not exercised it. The imprisonment of the servant was so far from being a cessation of the service, that perhaps his labour might have been required of him by the master even while he was in prison. Then what farther circumstances appear upon this case? It is stated that the master deducted the wages for the period during which the pauper was absent. But after that period he returns into the service, (then indeed, he was married, but he goes on under the old contract,) and nothing passes between the master and the servant with respect to any alteration, or any new contract, during the remainder of the nineteen months. The master indeed had an election to avoid the contract, but he made his election to continue the pauper in his service, which it was in his power to do. In *Rex* v. *North Cray*, *Cald.* 495. *S. C.* 2 *Bott*, 322, 5*th edit.*, *post*, p. 440. there was an incomplete service. — *Le Blanc* J. I think there was not any dissolution of the contract; the master might have discharged him, but he did not: he must then have returned on the footing of the old hiring. It is said, indeed, that there was an interruption of the service, but during the whole time he was subject to his master. It was under the authority of the contract that his master acted when he punished him for misconduct; therefore it was not a dissolution. The master might perhaps have elected to dissolve it, but he has not done so. Nei-

ther do I think this was an interruption of the service to prevent a settlement.—*Bayley* J. The relation of master and servant continued notwithstanding the commitment of the servant procured by the master. The commitment did not set free the servant from his contract to go wherever he pleased after the imprisonment ceased. That would be allowing him to avail himself of his own wrongful act. Then, as to the service during the nine days, perhaps the servant could not strictly be said to be actually serving while in prison, but there was a service for more than a year under a hiring for a year.—*Dampier* J. It seems to me that the master had no intention of dissolving the contract, for instead of that, he hastens back the return of the servant by begging off his punishment for the whole of the period, except nine days. — Orders quashed.

(*e*) Dissolution.

A servant, eleven weeks before the end of his year, in order to procure a discharge from his master, engages another to supply his place, and hires himself to another for the remainder of year; Held a dissolution.

Rex v. *Mildenhall*, *T.* 50 *Geo.* 3. 12 *East*, 482. *Bott*, *Cont.* 146. 1 *Nol. P. L.* 399. 465. Removal from *Wilcot* to *Mildenhall*, both in *Wilts*: and confirmed by the sessions on appeal, subject to the opinion of the Court upon the following Case: — The pauper, *William Dowling*, being settled at *Mildenhall*, at *Michaelmas*, 1803, agreed with *J. Stratton* of *Wilcott*, to serve him for a twelvemonth, at 6*s.* per week in the winter, and 6*s.* 6*d.* in the summer, and a certain allowance besides. He went into the service at *Old Michaelmas*, and served his master at *W.* till *July*, within 11 weeks of the expiration of the year. The pauper not behaving as he ought, and neglecting his business, his master and he had a dispute, in consequence of which *the pauper asked his master to discharge him*; but he answered he would not unless the pauper would get another man in his stead. The pauper accordingly got *W. Racey*, to whom he agreed to give a guinea and a half out of his own pocket, to take his place, besides his wages, which were to be paid to him by *Stratton* the master. The pauper stated in evidence that when he brought *Racey* to his master, the master said, "If this man does any otherwise than well, I can send for you, and make you serve your time out;" to which the pauper replied, "Very well." On the contrary, the master stated, in evidence, that "he did not recollect having said to the pauper that he should expect him to return; that it was not his intention to have him back; and that they parted on bad terms." The guinea and a half was paid by the pauper to *R.* at the time he entered the service; and *R.* served out the remainder of the year with *Stratton* at *W.* and received the wages from him for that time. The pauper during the remainder of the year hired himself as a day-labourer in the adjoining parish, and occasionally slept at *W. R.* continued to serve *S.* under a new agreement till the end of the year. — The Court thought it unnecessary to hear counsel in support of the orders. — Lord *Ellenborough* C. J. said, Though it is said that the pauper might have returned at a day's notice, I do not think that varies the case. According to the master's account it was a case of dissolution of the contract, and the sessions have drawn that conclusion, and we cannot say that it is wrong. — *Grose* J. The pauper, upon a quarrel with his master, applied for his *discharge*: the master refused, unless upon condition that the pauper procured another person to serve in his

Dissolution: absence originating in the act of the master.

stead: and the pauper complied with the condition. And then the sessions, contrasting the master's evidence with the pauper's, have concluded that he was discharged, and the contract dissolved, and we cannot quarrel with that conclusion which it was competent for them to draw. *Le Blanc* J. agreed, and said, that unless the Court saw clearly that the sessions had concluded wrongly, they would not reverse that conclusion. — *Bayley* J. agreed. Order confirmed.

If a master insist upon turning his servant away, and lay down his wages, which the servant takes up and then goes away: it is a dissolution, though he afterwards return at the request of his master.

Rex v. *Gresham*, *H.* 26 *Geo.* 3. 1 *T. R.* 101. 2 *Bott*, 326. 1 *Nol. P. L.* 417. On a rule to shew cause why an order of sessions of the city and court of *Norwich* confirming an order of two justices, should not be quashed. — The case stated, That *William Thompson* was settled at *Gresham*, when he hired himself for a year at the wages of 3*l.* to Mr. *Creemer* of *Beeston Regis*; that he duly entered upon his said service, and continued therein for about a quarter of a year; and upon some dispute between him and his master, his master insisted upon turning him away, and threw down fifteen shillings, which the pauper took up, and went away to his father's house in *Norwich*, where he continued for six days, during which time he looked upon himself as a free man: That the pauper then returned *at the request of his master*, and continued in the service to the end of the year, when he received 45*s.* being the remainder of his wages agreed for at the hiring. — By Ld. *Mansfield* C. J. The absence of a servant from his master's service is an equivocal act, and therefore may be explained by other circumstances; but if it appears that the contract has been once dissolved, it cannot be set up by a new agreement. In this case the contract was absolutely dissolved: the master insists upon turning him away, and pays him down all his wages that were due; the consent on the other side is by taking the money up: Then how does he come back again? It is upon the *request* of the master: there is nothing by which the absence can be explained. The meaning of *purging an absence* is where the act itself is doubtful. (See *ante*, *Rex* v. *St. Philip* in *Birmingham*, and *Rex* v. *Hardhorn with Newton*, p. 419.)

If a servant be turned out of doors by his master, and refuse to go again, though requested by his master, and receive his wages and depart contrary to the express request of his master, it is a dissolution of the contract.

Rex v. *Grantham*, *T.* 30 *Geo.* 3. 3 *T. R.* 754. 2 *Bott*, 331. 1 *Nol. P. L.* 394. 437. 444. *Read*, the pauper, was hired a fortnight after *Martinmas*, 1784, by *N. Leadenham* of *Allington*, for a year, and entered upon his service, and continued therein about six weeks, when, with his master's leave, he went to assist his father, who was ill, where he stayed thirteen weeks; when he returned, in consequence of a warrant having been obtained against him at the instance of his master, into his service under the original contract, and continued therein until *Sunday* evening, three days before the end of the year, when his master came home in liquor and abused him, threw him down, and afterwards turned him out of doors. The pauper slept at his father's that night at *Allington*, and the next morning his master would have had him return to his service, and stay out the year, but *he refused to go again*, and threatened, that unless he paid him the whole of his wages, he would complain of the ill usage he had received to a magistrate. The master then agreed to pay him his full year's wages, deducting for the thirteen weeks he was with his father; which he took and then left his service, *contrary to the express request of his master*. — Ld. *Kenyon* C. J. The circumstance stated in the case, that this

transaction happened only three days before the end of the year, might have led us at first to suppose there was some fraud intended on the part of the master; but none is stated. It has been said, and rightly so, that an *actual* service is not necessary, for that a *constructive* service is sufficient: But the question here is, Whether we can say that there was a constructive service for the whole year? and whether the relation of master and servant subsisted during that time? If the absence be for a reasonable cause, it is immaterial whether that absence be at the beginning, the middle, or the end of the year. And it has been argued that this was an absence for a reasonable cause, on account of the ill treatment of the master; but here there was no *animus revertendi*, which distinguishes the present from the class of cases alluded to. When the servant was ill-used, though he could not have left the service without his master's consent, or without applying to a magistrate to be discharged on that account, yet the master did consent to the servant's leaving him, and both parties agreed to put an end to the contract. If the master had afterwards complained of the pauper's not serving him for those three days, the latter might have answered by saying, that the contract was dissolved. And if its being absolutely put an end to only three days before the expiration of the year will not defeat the settlement, what line can be drawn with respect to the time of the service which is necessary to give a settlement. If one day or three days may be dispensed with, any other time may be equally so. In some cases, indeed, where it has been equivocal what the transaction really was, and the servant has paused and considered whether he would absolutely quit the service or not, other circumstances have been admitted to explain the absence; but here was no suspense, no *locus pœnitentiæ;* for both the master and servant agreed to put an end to the service. The master wished to turn away the servant, though unwarrantably; and though the latter was not bound by such ill treatment, he afterwards consented to dissolve the contract.—*Ashhurst* J. concurred. Both orders confirmed. See *Rex* v. *Hardhorn with Newton,* (*ante*, p. 419.)

Dissolution: absence originating in the act of the master.

Rex v. *Clayhydon, M.* 31 *Geo.* 3. 4 *T. R.* 100. 2 *Bott*, 332. 1 *Nol. P. L.* 426. The pauper, being settled at *Ufculm*, agreed with *W. Hodges* in *Dunkeswale* for a year, at the wages of 2*l.* 15*s.* and served till nine days before the end of the year, when on a *Sunday* morning he went away in order to get another place when his year should be up, without asking any leave of or mentioning it to his master; he returning on the *Tuesday* following about six o'clock in the morning, when he asked his master what work he should go about; the master told him he might go and serve the master he had worked for the day before. He saw his master about an hour afterwards, who then paid him his wages up to that time only. No conversation passed. He then went away and did not afterwards return: *he wished to have staid out the year, but his master would not let him.*—Ld. *Kenyon* C. J. It is now too late to say that a *constructive service,* pursuant to a hiring for a year, will not confer a settlement, though I very much doubt whether a greater certainty on this subject would not have been attained by attending strictly to the words of the act; however, in order to preserve an uniformity of decisions, we must adopt the construction which has so frequently been put upon it. But I do not know that it ever has

If the servant nine days before the year is out, goes away on a Sunday morning to get another place when his year should be up, and does not return till Tuesday morning; when the master tells him he may go and serve the master he has worked for the day before, and pay him his wages to that time, and will not let him stay out the year, it is a dissolution.

Dissolution: absence originating in the act of the master.

been decided that a settlement was obtained, *unless by construction the relation between master and servant continued during the whole year*. The cases of *Rex* v. *Islip*, and *Rex* v. *Maddington* (*ante*, p. 409. 413.) which have been relied on, do not govern the present. In the former the servant did not return until after the expiration of the year, and the facts of that case left the question open, Whether or not the relation between the parties subsisted during the whole year? The Court there thought that the master improperly refused his consent, and that though the servant was not in the actual discharge of his duty in his master's house; yet as he was liable to be called into his master's service during the remainder of the year, that he was constructively in that service down to the end of the year. But the present case differs from that; because, during the continuance of a year, a further act was done; when the servant returned after his absence the master not only found fault with him, but refused to take him again into his service; it is true that the servant wished to continue, but both parties did that which put an end to the contract; the one paid, and the other received the wages. After that period the servant was no longer under the controul of the master. In *Rex* v. *Islip*, the servant was under the master's controul during the whole year: he was liable to be called into the master's service whenever the master thought proper; but here the relation between the master and servant was rescinded before the end of the year, by the act of both parties; then it is impossible to say that the pauper was constructively in the service after that time. So in the case of *Rex* v. *Maddington*, though the servant left the service three weeks before the end of the year, and went to his friend, because he was not able to perform his service, yet there was no act done during the year to put an end to the contract: afterwards, indeed, when the master paid the wages, he deducted a part of them; but he could not by an act *ex post facto* deprive the servant of the benefit to which he was before entitled. But the case of *Rex* v. *Gresham* is extremely like the present; there the Court held, that by the act of accepting the wages, the servant agreed to put an end to the contract. I am therefore of opinion that there could be no *constructive* service in this case, when the parties themselves, by mutual consent, put an end to the relation of master and servant within the year. *Grose* J. agreed.

Ante, p. 423.

Where upon ill treatment by the master the servant requires to be dismissed, and the master pays her the whole year's wages, and tells her she may serve the remainder of her time, and she refuses, it is a dissolution.

Rex v. *Upwell*, *M.* 38 *Geo.* 3. 7 *T. R.* 438. 2 *Bott*, 343. 1 *Nol. P. L.* 428. 444. The pauper was hired at *Michaelmas* 1791, by *J. Failes* of *Upwell*, for a year, and continued in his service until within 15 days before the following *Michaelmas*, when her master kicked and beat her: she complained to her father of this ill treatment, and in conjunction with him *required her master to dismiss her* from his service, under a threat of applying to a magistrate for redress, on account of the assault; *her master* then *paid her the whole of her wages*, and told her she might serve the remainder of the year, but she refused so to do, and immediately left the service. When this case was called on for argument, the *Court* said there was no question in it, for that according to the facts stated, it must be considered as an agreement by both parties to put an end to the contract several days before the end of the year, and consequently that the pauper had gained no settlement in *Upwell*. And that the case of *Rex* v. *Grantham* was decisive of the present.

Rex v. *Corsham*, *E.* 42 *Geo.* 3. 2 *East*, 303. 2 *Bott*, 346. 1 *Nol. P. L.* 444. Removal from *Kington St. Michael* to *Corsham*, both in *Wilts*, and confirmed by the sessions. The pauper's husband was hired by Mr. *Dalmer* of *Corsham*, at four guineas per annum, with whom he continued to serve till within a fortnight or three weeks of the expiration of the year, when upon a dispute between him and his master, he, in consequence of his master's kicking him, would not stay, but went to his father's house in *Kington St. Michael*. In the course of the following week, and before the end of the year, he returned with his father to Mr. *Dalmer's* house, and received the whole of his wages, and 2*s.* 6*d.* over for himself: his master asked him to stay, but he refused, and went back to his father's house. — Ld. *Ellenborough* C. J. The cases of *Rex* v. *Grantham*, and *Rex* v. *Upwell*, have decided this. In both, there was a payment by the master of the whole year's wages, and a departure from the service before the end of the year against the will of the master; and in both the Court held, no settlement was gained. There is nothing material to distinguish this case from those, and therefore it is better to abide by them.

Dissolution: absence originating in the act of the master.

Rex v. *King's Pyon*, *M.* 44 *Geo.* 3. 4 *East*, 351. 2 *Bott*, 347. 1 *Nol. P. L.* 432. The pauper was hired to Mr. *Davies* of *King's Pyon*, to serve him from *Old May-day* 1800 to *Old May-day* following. At the end of eight months she had a dispute with her master, and *he dismissed her from his service.* She applied to a magistrate; she was desirous of continuing in her service, but her master refused; and the magistrate ordered her master to take her back into his service, *or pay her the whole of her wages;* he refused to take her again, but paid her the whole of her money, but not some wool which he had stipulated to give her as part of her wages, if she behaved well. *After receiving her wages, she offered herself as a servant to several persons.* She was removed from *Weobly* to *King's Pyon*, and the sessions thinking this to be a dispensation, confirmed the order. — *Per* Ld. *Ellenborough* C. J. We are not called upon to say, whether the magistrate had or had not a right to discharge the servant from her service; it is enough that he proposed an option to the master to take the servant back, or pay her the whole of her wages. The master refused to take her back, but agreed to pay the whole wages, and did pay them; and the servant shewed her assent to the dissolution of the contract by taking the wages and offering her services to other persons. Both parties gave the magistrate a power of dissolving the contract, by shewing their assent to what he directed in that respect. Then, after all this, could the master or servant have maintained an action against each other, the one for not performing the remainder of the service, the other for not employing her during that time? This is the true question to be considered. I do not mean to disturb any of the cases which have been already decided; but I am not inclined to carry the decisions further still from the plain words of the act of the 8 & 9 *W.* 3. *c.* 30. which are "that no servant shall gain a settlement, unless he shall *continue and abide in the same service* during the space of *one whole year.*" And it seems to me, that *when the parties stand in such a situation that neither the master can compel the servant to come back into his service, nor the servant can compel the master to take him back, and neither of them have any legal means of compelling redress against the other, there is a dissolution*

A master refusing to take his servant back, and the servant taking the wages, and offering herself to others as a servant, is a dissolution.

Dissolution: absence originating in the act of the servant.

of the contract. — *Grose* J. agreed. — *Lawrence* J. Here is nothing like an *abiding* in the service *for a whole year.* In *Rex* v. *Thistleton,* (6 *T. R.* 185.) — Ld. *Kenyon* said, that the cases in which it had been determined that a settlement was gained, notwithstanding the servant was not in the actual service of the master, *proceeded on a supposition* that the relation of master and servant continued throughout the year; but if the master had once parted with the controul over his servant, and could not call upon him for his service, no settlement was gained; and in *Rex* v. *St. Peter's Mancroft, Norwich,* (8 *T. R.* 478.) he laid down the same distinction, and held that to gain a settlement the servant must continue liable to serve the whole year. If the pauper be absent with the concurrence of his master it is a dispensation; but if the master cannot resume the right to the pauper's service, it is a dissolution. — *Le Blanc* J. agreed. Both orders quashed. See *Rex* v. *Leigh, post,* p. 437.

If upon being taken ill the servant sends for his clothes and money, which his master sends, deducting for the absence during illness, it is a dissolution.

Rex v. *Whittlebury, M.* 36 *Geo.* 3. 6 *T. R.* 464. 2 *Bott,* 340. 1 *Nol. P. L.* 385. 425. *J. Roberts,* his wife, and son, were removed from *Whittlebury* to *Paulerspury;* the sessions quashed the order, and stated the following Case:— The pauper was born at *Whittlebury,* and was hired by *J. Grimsdick* of *Paulerspury,* from *Michaelmas* to *Michaelmas,* at the wages of 50*s.* He entered into and continued in the service until within five days of the end of the year, when he went to *Towcester* statute to seek for a place; while he was there, he was suddenly taken ill of a fever, which continued for six weeks, and he was deprived of his reason a part of that time; he went from the statute to his mother, but neither of them having any money to maintain him during his illness, he that night desired his mother to go to his master for his money, and to bring away his clothes; the mother went the next day, and at her return she brought his money all but 1*s.* which his master had stopped for the remainder of the year, and gave it to him together with his clothes, with which he was satisfied, and he thought himself at liberty to hire himself to another master if he had been well enough. — Ld. *Kenyon* C. J. I confess I have not been able to raise the least doubt in my mind on this case. The case of *Rex* v. *Tedford, Burr. S. C.* 57. is a very considerable authority to shew that when the sessions state all the facts, as well as their determination, we are not precluded from examining the conclusion drawn by them from the facts. Therefore, without saying more on that head, but entering into the consideration of the premises here, as the justices intended we should, I think that the conclusion that the justices drew was the right one. There is no doubt but that the parties may put an end to the contract during any part of the year, either at the beginning, in the middle, or only a day before the end of it: and if they do, the servant gains no settlement, because the act of parliament requires, that the relation of master and servant should continue during a whole year. It is not necessary here to decide whether in every case the receipt of wages before the expiration of the year puts an end to the contract, or whether a servant being taken ill during the year, the master can of his own authority discharge him, and put an end to the contract, or whether in such a case justices may put an end to the contract: but it is here stated that five days before the end of the year, (and it is immaterial whether that happened five months

or five days before the year expired,) the pauper sent his mother to his master for his money, the latter paid the wages stipulated for the whole year except 1*s*., which he deducted because the whole year's service was not performed. As far therefore as the master had the power, he did put an end to the contract before the end of the year: he had no right to deduct the shilling, but on the ground that the pauper did not continue his servant until the end of the year. Then what was the conduct of the servant? He received his money, saying that he was satisfied; and "it also appears that he thought he might have hired himself to another master before the end of the year. One party said, I put an end to the contract as far as lies in my power; the other said, I also agree to put an end to it as far as respects me; therefore both parties, whose consent was necessary, did consent to dissolve the contract before the expiration of the year."— *Grose* and *Lawrence* Js. gave their opinions to the same effect, and *Grose* J. added, that this was a mere question of fact which he thought the sessions should have finally determined. Order of sessions confirmed.

Dissolution: absence originating in the act of the servant.

Rex v. *The Inhab. of Tyrley*, *T.* 2 *Geo.* 4. 4 *B.* & *A.* 624.— Removal from *Audlem* in *Cheshire*, to *Tyrley* in *Staffordshire*. The sessions upon appeal confirmed the order, subject, &c. Case: *Edward Peake*, the pauper, hired himself at 8*l*. and his washing, without any time being specified, but which the sessions found to be a general hiring for a year. The pauper entered into his service the day before *New Year's Day*, and quitted with the consent of his master, two days after *Christmas-day*, the usual time that servants, in that part of the county, go into and leave their places. The pauper received the whole of his wages at the time of his quitting, and stated, that when he left, he considered himself no longer under the controul of his master. The sessions confirmed the order, and found this to be a hiring and service for a year.— *Pearson*, contra. Although the sessions have found it to be a hiring for a year, yet it is clear their decision is wrong, for there is no ground for presuming any dispensation with the service. It is expressly stated that the pauper quitted at the usual time, and came in also at the usual time. There was, in substance, therefore, only a hiring, according to the custom of the country, which it appears is for a less period than a year. *Abbott* C. J. As the sessions have expressly found the fact of a hiring and service for a year, I think we are bound by it. I cannot say that no reasonable person could come to such a conclusion upon the facts stated, although I certainly should not have come to it myself. I should have thought, that, in this case, there was neither a dispensation with the service, nor a dissolution of the contract, but that the contract had arrived at its termination, and that before a year had expired. But still, as the question was properly for the determination of the sessions, who have expressly found the fact otherwise, I think their order must be confirmed. Order of sessions confirmed.

A pauper having hired himself without specifying any time, entered into the service the day before New Year's Day, and quitted two days after Christmas, receiving his full wages: that being the usual time that servants in that part of the country go into and leave their places. The court thought that this was a contract which had arrived at its termination before the expiration of a year; but the sessions having expressly found it to be a hiring and service for a year, the court considered themselves as bound by that finding.

Rex v. *St. Peter Mancroft*, *H.* 40 *Geo.* 3. 8 *Term Rep.* 477. 2 *Bott*, 344. 1 *Nol. P.L.* 388, 389. 422. *Sarah Gayfer*, the pauper, was let to Mrs. *Morton* of the parish of *St. Peter Mancroft*, about a fortnight before *Michaelmas*, 1797, by a letter sent by Mrs. *Morton* to the pauper's friends, stating that she gave 3*l*. a year wages, on which the pauper agreed to go, and sent to her

Servant entered a new service 12th October, having left her old one the preceding day; wages had been

Dissolution: absence originating in the act of the servant.

previously agreed upon, but no time mentioned for commencement of the service; she continued in such service till the following New Michaelmas Day, when she received the wages agreed upon, and quitted.

mistress to let her know when she should come, and in consequence of a second letter, desiring her to come on *Thursday* the 11th day of *October*, she went to her service on the 12th of that month; on her going, her mistress objected to her not having come the day before, for which the pauper gave as a reason, that she had only quitted her last place late on *Old Michaelmas day*. About three weeks after she went, the pauper said to her mistress, that it was proper to come to some agreement as they had never had any, further than a few lines; to which her mistress answered, "you know what wages I sent you word, and as the general way is to let for a month's wages, or a month's warning, I do not wish to confine you for a year:" but did not say any thing about not choosing to hire for a year; she received her wages quarterly, and about a fortnight before *New Michaelmas-day* her mistress asked her whether she chose to go away on *New Michaelmas-day*, or *Old Michaelmas-day*, assigning as a reason for her asking that she had hired a new servant, who wished to come to her at *New Michaelmas*. The pauper said it was immaterial to her, as she had not got a place, and agreed to go at *New Michaelmas*, which she did, at which time the other servant came into her mistress's service. Her mistress was not in a condition of life to keep two servants; and if a place had offered at *New Michaelmas*, the pauper looked upon herself as in a situation to take it, though when she first got to her mistress, she considered herself as to live with her until *Old Michaelmas*. Upon quitting her service upon *New Michaelmas-day*, which was a fortnight after the agreement to go, her mistress paid to her the whole which remained due of the 3*l.* wages, although at the time when the pauper agreed to go away at *New Michaelmas*, nothing was said about wages. The pauper would not have objected to going away at *New Michaelmas* if her mistress had proposed to make a deduction for the time, but would have mentioned it to her and told her she was willing to stay till *Old Michaelmas*. The pauper liked to go away at *New Michaelmas* rather than *Old Michaelmas*, but would not have staid after *Old Michaelmas* if her mistress had requested her. The pauper considered the conversation which passed on the fortnight before *New Michaelmas*, as a month's warning to go away at *Old Michaelmas*. When this case came on for argument, Lord *Kenyon* C. J. said, that upon this case as disclosed, there was strong evidence to induce the Court of quarter-sessions to adjudge that the contract between the mistress and the servant was dissolved before the end of the year, and consequently that the latter did not gain a settlement in *St. Peter's, Norwich*. That the distinction established in all the cases was perfectly clear, that where the servant continued liable to serve during the whole year, though the master dispensed with the actual service for any part of it, the servant gained a settlement, because the relation of master and servant subsisted all the year, and the master might resume the right to the service if he chose; but that, where the parties absolutely put an end to the contract before the expiration of the year, as in the present case, the servant did not gain a settlement. That though it was at first doubted whether or not the master could dispense with the service at the end of the year, so as to give the servant the benefit of the contract for the purpose of a settlement, it had been long settled, that it was immaterial whether the service was dispensed

with at the beginning, the middle, or the end of the year. — *Grose* J. The Court of quarter sessions should state the result of the evidence, and, in a case of this kind, they should state the fact one way or the other, whether this were a dispensation with the service, or a dissolution of the contract. The counsel in support of the order of sessions saying there were reasons that would probably induce the sessions to decide that there was a dispensation with the service, the Court ordered the case to be sent down to be re-stated.

Dissolution: absence originating in the act of the servant.

If after a hiring for a year a servant be taken ill and receive voluntarily his whole year's wages, and leave his service and go to the hospital, and never return, it is a dissolution.

Rex v. *Sudbrooke, M.* 44 *Geo.* 3. 4 *East*, 356. 2 *Bott*, 349. 1 *Nol. P. L.* 414. 424. The pauper being settled at *Sudbrooke*, hired himself for a year in another parish, and after some time, being too ill of a fever to do his work, his master paid him his whole year's wages, when *he left his master's service*, and went to the *Lincoln* hospital, and never returned again to his master. The removal was to *Sudbrooke*, and confirmed by the sessions. — *Per* Ld. *Ellenborough* C. J. The doctrine of dispensation has only been allowed where both parties contemplated the continuance of the relation of master and servant. But here the servant being ill and unable to do his work, voluntarily *left his master's service*, as it is stated in the case, before the end of the year, when his master paid him his whole year's wages; we must therefore take it, not only to be a ceasing to *abide*, in the words of the act, but a relinquishment of the service altogether. After that neither party could maintain any action against the other for the affirmance of the contract, or continuance of the service. Then if neither had any remedy against the other upon the contract, or any compulsory means of enforcing its execution, it must be dissolved in point of law. In *Rex* v. *Christchurch*, at the time of the servant's departure, both parties contemplated the continuance of the service if the servant recovered. I do not overlook the circumstance pressed upon us, that there was an advance of the *whole year's* wages before the end of the year; but the same circumstance occurred in *Rex* v. *Godalmin*, and *Rex* v. *Castlechurch*, and yet no settlements were there holden to have been gained by the servants who quitted their master's service before the end of the year by mutual agreement. — *Lawrence* J. agreed, that the question to be considered was, whether the master did or did not retain his controul over his servant during the whole year. — *Le Blanc* J. agreed, and said, that he did not found his opinion upon the mere circumstance of the servant's leaving his master's house to go to the hospital, but that he thought that the parties came to a determination to put an end to the contract. That the servant's illness could not enable the master to put an end to the contract, but if the servant should choose on account of illness to go away, illness could not prevent him from coming to an agreement with his master to put an end to the contract, and that here the servant received his whole year's wages, went away before the end of the year, went to the hospital, and never returned to his master again. That according to *Rex* v. *Castlechurch*, the payment of the *whole* year's wages made no difference, if the parties agreed to put an end to the contract before the end of the year. And that though illness would not enable *one* of the parties to put an end to the contract, it might still induce both to come to such an agreement. Both orders confirmed.

Dissolution: absence originating in the act of the servant.

Terms mentioned but no absolute agreement till a week after Old Michaelmas, when the servant entered upon the place, which she left, after giving warning for the following Old Michaelmas Day; held a dissolution before the end of the year.

Rex v. *Rushall*, *T.* 46 *Geo.* 3. 7 *East*, 471. 1 *Nol. P. L.* 389. 418. The pauper, some time before *Old Michaelmas-day*, 1802, the time at which the service in which she was then living at *Wiston* in *Sussex* was to end, wrote to her mother, desiring her to look out for a place for her; which she did, and in consequence treated with the wife of the Rev. Mr. *Peck* of *Rushall, Wiltshire*; upon which Mrs. *P.* informed the mother that she would give her daughter the same wages as she did to her other servants, (being ten guineas a-year, and a guinea for tea,) and wait till she came down, and desired that she would come as quickly as she could; but the mother made *no absolute agreement* for her daughter, but afterwards informed her that she *had got* a place for her *if she liked it*. The pauper left her service at *W.* immediately on its expiration, and went into *Wilts* without delay, and arrived on *Saturday* the 16th of *October* at her mother's; and on *Monday* the 18th Mr. *P.* applied to her to know if she liked to come into his service, saying that he wanted her to come immediately as he had company to dinner. She went to Mr. *P.*'s house, and then it was for the first time agreed between Mr. *P.* and her, that the wages should be ten guineas for the year, and a guinea for tea, with liberty of parting at a month's wages or a month's warning. She then went to work, and continued in Mr. *P.*'s service until *Old Michaelmas day* following. About five weeks before that time *she gave her mistress notice that she should quit her service at the next Old Michaelmas day*. On the said *Old Michaelmas day*, 1803, the pauper came to her mistress to receive her wages, who paid her her whole year's wages and the guinea for tea, but told her she wanted a week of serving out her year. The pauper said she was willing to stay out another week; but the mistress replied that it did not signify, as she had got another servant in her place, who was then in the house (which in fact she was). She then left the house and never returned into the service afterwards. The sessions were of opinion that the pauper was settled at *Rushall.*—Ld. *Ellenborough* C. J. The case expressly states that the mother made *no absolute agreement* for her daughter. The daughter arrived at *Rushall* about a week after *Old Michaelmas day*, when upon Mr. *P.*'s application to her to know if she liked to come into his service, she went there, and *then* it was, as the case states, for the *first* time *agreed* between Mr. *P.* and her, &c. with liberty (which was not before mentioned) of parting at a month's wages or a month's warning; this was on the 18th of *October*. Then about five weeks before *Old Michaelmas day* the pauper gave her mistress notice to quit at *Old Michaelmas day*. The mistress could not object to receive the notice, and therefore looked out for another servant, but when the pauper went to receive her wages, the mistress paid her the whole year's wages, but told her that she wanted a week of serving out the year. The pauper then said indeed, that she was willing to stay another week; but as the mistress, in consequence of the warning which the pauper had given her, and which she had accepted, had provided herself with another servant, and did not want two of them, she told the pauper it did not signify, as she had got another servant in her place, on which the pauper left the house. There can be no doubt upon this statement that both parties agreed to put an end to the service before the end of the year. The servant gave above a month's warning to quit at *Old Michaelmas*, which she had

a right to do, and the mistress accepted the warning, and both parties acted upon it. And this it appears was in fact before the end of the year, whatever the servant might have supposed when she gave the warning. Now "the rule" which the Court has laid down as the test whether the circumstances attending the departure of a servant before the end of a year amount to a dissolution of the contract, or only to a dispensation of the service, is "Whether the master has the power afterwards of compelling the continuance of the service; if he have not, there is an end of the contract; if he have, but choose to dispense with it, it is a dispensation." If, after this, any person had harboured the servant when the mistress desired her services, could she have maintained an action for it? Certainly not; and that is a fair test that the relation of master and servant had ceased to exist. The other judges agreed. Both orders quashed.

Dissolution: absence originating in the act of the servant.

Rule for deciding the fact of dissolution.

Rex v. *Maidstone*, *T.* 50 *Geo.* 3. 12 *East*, 550. *Bott. Cont.* 148. 1 *Nol. P. L.* 332. 414. Removal of *Ann* the wife of *G. Langridge*, who had deserted her, *Elizabeth* aged nine years, *Frances* aged two years, and an infant male child not baptized aged about three months, her children, from *Maidstone* to *Thurnham* in *Kent*. The sessions quashed the order, and stated as follows: The order of removal was dated *August* 13. 1808. *G. L.* the pauper's husband previous to *Michaelmas*, 1797, was a settled inhabitant of *Bletchingley*, *Surrey*, and at *Michaelmas*, 1797, hired himself at twelve guineas for a year to *S. T.* of *Thurnham*, to serve him as a waggoner; and entered upon his said service, and continued in it till *October* 8. 1798, on which day he was married to the pauper; *and his master consented to his leaving the service*, and paid him his wages. Nothing was subtracted on account of his leaving his master on the 8th of *October*. On the 9th of *October*, *L.* hired himself to and went into the service of one *Stone*. *Michaelmas-day* fell on the 10th of *October* in the years 1797 and 1798. In 1803, *L.* entered into the *Sussex* militia, and having afterwards volunteered into the 35th regiment, embarked for *Sicily* in *April*, 1806, and returned to *England*, *January* 4th, 1808. *Elizabeth*, named in the order, was born *January* 9th, 1806; and the child not yet baptized was born in the parish of *Maidstone*, *May* 5th, 1808. While the pauper's husband was thus absent with the regiment, the parish of *Thurnham* frequently paid her money for the support of her child, though she was resident all the time either in *Maidstone* (where the child was at nurse) or in other parishes, but not in *Thurnham*. It was also agreed upon the argument, to be added as a fact to the case, that *A. L.* the wife continued in *England* all the time that her husband was abroad with his regiment, and thereupon the Court all agreed, that the youngest child must be taken to be a bastard, and was therefore settled in the place of its birth. — After argument Ld. *Ellenborough* C. J. said, That, however, in the absence of all other circumstances, such as those stated in this case, the inference of a settlement in the parish might be drawn from the fact of such relief, yet here no such inference was wanted to be made, the Court having all the facts before them of the hiring and service, which was the foundation of the supposed settlement. The giving that relief amounts to no more than showing the opinion of the parish upon these facts, that the pauper was

Master consents to servant's leaving his service two days before the end of his year, and pays him his full wages, held a dissolution.

Dissolution: absence originating in the act of the servant.

R. v. Maidstone.

settled with them. And he added, that this was clearly a case of *dissolution*; and that he would not extend the doctrine of dispensation any further than it had already gone. That here "*the master consented to his servant's leaving his service,*" and that there could not be a stronger plea than this by the servant in an action against him by his master for deserting his service. Then he said, though the opinion of parties is not to be pressed, yet their acts are material, upon the question of dispensation or dissolution. And here it is stated, that after *L.* had left his first master's service on the 8th, he went on the following day, and which was the day before *Michaelmas-day*, and hired himself into the service of a new master. Here then, is an express renunciation on the part of the master of his rights over the servant two days before the end of the year; and the servant's assent to this, signified by his departure from the service, and contracting the next day an obligation to another master, into whose service he entered immediately, subject to all the rights of the new master over his service. How then can I say in the words of the stat. of *W.* (8 & 9 *W.* 3. *c.* 30.) that there was a continuing and abiding by the servant *in the same service during the space of one whole year*, when it appears that that period of service was abridged by the two last days of the year? — *Grose* J. agreed. — *Le Blanc* J. Upon the facts of the case, as it appeared at the sessions, I think they would have been well founded in finding as a fact, that this was a dispensation of the service on the part of the master, and not a dissolution of the contract; for, according to the cases, it is always a question for the sessions to decide, whether the consent of the master to the servant's leaving his service a few days before the end of the year, for a particular purpose, but paying him his whole year's wages, be a dispensation of the service for the remainder of the year, or a dissolution of the contract? Here the servant wanted to marry, and one entire day before the end of the year the master gave him leave to marry and go away from his service. It was a fair and reasonable conclusion to draw, that if the servant wished to go away one day before the end of his service for the purpose of marrying, the master would have no objection to dispense with his service, and give him a holiday for one day; for the service would have ended on the 9th. But the sessions not choosing to draw this conclusion themselves, which I think they might have done, send the case to us upon the dry facts stated, and have not found that the master did consent to give his servant a holiday, and to dispense with his service for the remaining day of the year, but merely state as a fact, that the master consented to his *leaving his service*. Under these circumstances I cannot say that the sessions have done wrong in quashing the order of removal to *T.*, though I think they might have drawn a different conclusion from the facts of the case. — *Bayley* J. said, The sessions had done right in quashing the order of removal. He said, "In order to constitute a case of dispensation, I think the master should have power to recal the servant to his service all through the year; but where the master agrees generally to let the servant go away from his service, without reserving to himself the right of recalling him, throughout the whole year, I think that puts an end to the contract of service altogether." Order of sessions confirmed.

Rex v. *Leigh*, *T.* 46 *Geo.* 3. 7 *East*, 539. 1 *Nol. P.L.* 420. 433. The pauper *John Brazier* being legally settled in *Clifton-upon-Teame*, on the 31st *March*, 1795, hired himself as a servant in husbandry for a year to *S. Jones* of *Lulsley*, and agreed for 6*l.* 10*s.* for the year's service. He resided at *L.* in *J.*'s service till *March* 25th, 1796, upon which day by his master's leave he went to the mop, a meeting for hiring servants, for the purpose of seeking a new service for the ensuing year. He returned to his master's house at three o'clock in the morning of 26th of *March*, with some ribbons in his hat which he had purchased. In the course of that morning *his master* came to him, and observed, "He supposed masters were scarce at the mop, and that he had enlisted for a soldier, and *told the pauper, he should stop no longer in his service.*" The pauper told his master he had not enlisted, (which was the fact,) and that he wished to stop his year out. But the master said he would not keep the pauper any longer in his service, and the pauper should stop no longer, and at the same time offered the pauper something less than 6*l.* 10*s.* as wages, which the pauper refused to accept. The pauper said he would have accepted the full year's wages, if then tendered to him by his master; but that he had rather have staid out his year. *The pauper left his master's house immediately* in consequence of what had passed, *and never returned* to it. On 27th *March* a summons having been taken out by the pauper against his master, they both appeared before a justice of the peace for the said county; upon which occasion the pauper applied to the magistrate to direct his master either to receive him into his service for the remainder of the year, or to pay him his whole year's wages; the magistrate verbally directed 2*s.* 6*d.* to be deducted from the year's wages and retained by the master. On the same 27th of *March* the *pauper hired himself to a* Mr. *Smith* of *Broadwas*, and *on the same day entered* upon such service. About a week after he went to his former master, Mr. *Jones*, for his wages, who paid the full sum of 6*l.* 10*s.* Mr. *Jones* some days afterwards applied for a return of the half-crown directed by the magistrate to be deducted; but the same was never returned to him. The pauper was removed from *Leigh* to *Clifton-upon-Teame*, and the sessions quashed the order. — Ld. *Ellenborough* C. J. said, That this was the same case with that of *King's Pyon;* that the servant actually entered into another service before the time when his first contract would have expired. His not receiving his wages before the year was out did not vary the case, for he would have received them at any time if offered. The other judges concurred. Order of sessions quashed.

Dissolution; absence originating in the act of the servant.

Where, upon the master's insisting upon it, the servant leaves his master's house, and afterwards asks a magistrate's order to be received again, or paid his whole wages, and afterwards enters upon another service, it is a dissolution.

Pawlett v. *Burnham*, *M.* 1 *Geo.* 1. *Sett.* & *Rem.* 84. *Fol.* 187. 1 *Sess. Ca.* 71. 2 *Bott*, 300. 1 *Nol. P.L.* 436. A person was a covenant-servant for a year, but went away three weeks before his year was out, by his own and his master's consent; and was abated 6*s.* from his year's wages for it. It was objected, that being a *covenant*-servant, this doth import that it was by deed, and then the consent cannot discharge the covenant. — But by the Court: Here is no fraud expressed or implied. It is not within the words of the act, nor the meaning. Can a man compel his servant to gain a settlement *nolens volens?* As to the

If a servant, three weeks before his year is out, go away with his master's consent, and 6*s.* be therefore abated from his wages, it is a dissolution of the contract.

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covenant being by deed, and so the service continuing, perhaps he might bring an action on the covenant; and as to that point the service continued, but not as to gaining a settlement, where the statute saith he must serve for a year, which this man hath not served.

Fraud imputed but not *found* by sessions.

Rex v. *Preston*, *H.* 4 *Geo.* 2. *Burr. S. C.* 69. 2 *Bott*, 303. 1 *Nol. P. L.* 413. A person served under a hiring his whole year within five days, and then left his master by consent, the parish officers where he lived having first given him two guineas to leave the parish. The justices held this to be no settlement, and stated the case specially. It was objected that this departure was fraudulent.—But by the Court: The justices might upon evidence have examined into that point; and if they had thought that his departure was fraudulent, they would without question have stated it to have been so; but that not being done, we cannot intend any fraud, nor that the party hath gained any settlement, it being agreed on all sides that he hath not served his year.

Discharge by a justice.

Rex v. *North Basham*, *M.* 26 *Geo.* 3. 2 *Bott*, 323. *Cald.* 566. 1 *Nol. P. L.* 412, 413. 431. The pauper, in order to avoid a settlement in *East Basham*, having three days and a half before the end of the year married a female servant big with child by him, went with his master before a justice, to be by him discharged from his service. The master was willing that the pauper should be settled in his parish (*East Basham*), and saying so before the justice; and the justice after hearing both parties, discharged the pauper from his service. The master paid him his wages, all but for the three days and a half. And Ld. *Mansfield* C. J. said, This was a discharge before a justice, and it certainly was not fraudulent on the part of the master, for he had no objection to the settlement. It was a solemn discharge by the consent of both parties, and as such, a dissolution. The order of sessions confirming the removal from *Salthouse* to *North Basham* was confirmed.

If a servant with his master's leave go away from his service, and his year expire during his absence, he thereby loses his settlement, though the whole year's wages be paid.

Rex v. *Castlechurch*, *M.* 9 *Geo.* 2. 2 *Stra.* 1022. *Burr. S. C.* 68. 2 *Bott*, 304. 1 *Nol. P. L.* 428. A person was hired for a year, which he served till the last twelve days, when he went away with his master's leave, and stayed till after the year was up, when he returned for his clothes, and was paid the whole year's wages. The Court of K. B. on consideration that if they once allowed this absence for twelve days at the end of the year, (which differed from an absence in the middle of the year, which was purged by taking him again,) they should not know where to stop, determined that he gained no settlement. In this case the servant went from his service before the year was out, and the master consented to it; which is a plain determination of the service within the year.

Note.—The above report of this case is taken from *Strange*, where it is called *Seaford* v. *Castlechurch*. But a report of the same case in *Burr. S. C.* is more at length; and there it appears, that *at the time the pauper went away* with his master's consent, *he* took his clothes with him, and received his whole year's wages.

If a servant part from his master with his

Rex v. *Seagrave*, *H.* 23 *Geo.* 3. *Cald.* 247. 2 *Bott*, 321. 1 *Nol. P. L.* 414. 426. The pauper was hired from *Old Martinmas* to *Old Martinmas*. On *September* 25th he told his master

he was going to be married; his master made no answer; he went on *Saturday* and was married: upon his return he had no intention of quitting his service; the master said he would not employ him any longer; he said he would go if he would pay him his year's wages; the master refused, and said he would only pay him for the time he had served, and asked him if he would take his wages, or go before a justice? his master set out about his business to his farm, when the pauper called him back, and said he would take the money for the time he had served, and *that he parted with his own consent.*—The Court thought that the last words of the case were so clear and unequivocal a dissolution of the contract, that they would not permit it to be argued.

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own consent, and take the money for the time he served, it is a dissolution.

Rex v. *Thistleton*, *H.* 35 *Geo.* 3. 6 *T. R.* 185. 2 *Bott*, 339. 1 *Nol. P. L.* 420. 428. 463. The pauper being settled at *Thistleton*, was hired to Mr. *Raworth* of *Knawston*, from *Martinmas* to *Martinmas*, and entered upon the service, and before the end of the year he went to *Billesden* statutes, which are before *Michaelmas*, and hired himself to Mr. *Humphreys* of *Billesden*, to enter into his service on the 19th of *October*, if Mr. *R.* would let him come then, and if he was refused, he was then to come at the end of his year. The next day the pauper asked his master to let him go, who said he could not spare him; he must get a new servant first: some time after he hired a new servant, and then said, "I have got a new servant, you may go now; I have not work for you both." The master then paid him his whole wages, and he went away. This was about a fortnight before *Martinmas*, and he entered into his new service in three days.—Ld. *Kenyon* C. J. The distinction between the different cases upon this subject seems to be this; if the pauper be absent from the service with the concurrence, remaining however subject to the controul, of the master, he may acquire a settlement, because this only amounts to a dispensation with his service; but if the master has once parted with his controul over the servant, there no settlement is gained; and the receiving of the whole year's wages does not make any difference. In this case the master had given up all controul over the servant; he himself was instrumental in enabling the servant to make another contract with another master; and from what passed between those parties, it was evidently the intention of both that the pauper should become *sui juris*, and should be enabled to contract with another master. The cases, in which it has been determined that a settlement was gained, notwithstanding the servant was not in actual service during the whole year, proceeded on artificial reasoning, on a supposition that the relation of master and servant continued throughout the year. But that idea is inconsistent with what was done in this case; for if that relation had subsisted here, the master might have insisted on the pauper's returning into his service after the wages were paid: but he agreed not to insist on that when he parted with the servant. It is miscalling this a dispensation with the service; for upon the agreement to part, the pauper's liability to serve the first master ceased.—*Ashhurst* and *Grose* Js. delivered their opinions to the same effect.

If at the servant's request his master give him leave to go to another service, though he pay him the full wages, it is nevertheless a dissolution.

Distinction between the cases.

Rex v. *Ross*, *T.* 11 *Geo.* 1. *Burr. S. C.* 688. 2 *Bott*, 315.

If after six months' ser-

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vice, the servant, on being paid his wages for the time, go away for a fortnight, held a dissolution, though he afterwards return, and stay the remainder of the year without further agreement.

1 *Nol. P. L.* 417. *Thomas Chest*, the pauper, hired himself for a year to *Edmund Miles;* and served him in *Langarren* only three days. A difference arising between them about the business the pauper was employed in, *Miles* (the master) bid the pauper go about his business. On which the pauper immediately ran away, and quitted his service; and hired himself to *John Whitby* for a year, at 55*s.* a-year wages, and served *Whitby* for six months in *Whitchurch*. *Miles* then insisted on *Whitby*'s not keeping the pauper in his service. *Whitby* paid the pauper his wages to that time; and the pauper quitted that service, and went one or two voyages up the river *Wye*, as a labourer to a barge-master, for a fortnight. Then, at *Whitby*'s request, and with *Miles*'s consent, he returned into *Whitby*'s service without coming to any new agreement, or any mention of wages; and continued in *Whitby*'s service in *Whitchurch* seven months, being a month over the end of the year for which he was hired, in order to make out his lost time, and then received his wages.—It was argued, that the fortnight's absence being in the middle of the year, it was purged by the master's receiving him again.—But by the Court: Here is an absolute dissolution of the contract, both by master and servant, at the end of six months. Whereas the statute requires a continuance in the same service for a whole year. The new service cannot be connected with the old hiring.

Discharge of a female for bastardy operates as a dissolution.

Rex v. *Marlborough*, *T.* 12 *W.* 3. 2 *Bott*, 299. 1 *Nol. P.L.* 388. *3d edit.* In this case an order of removal was made of a maid-servant, who within her year of service was pregnant of a bastard. After deciding that such an one could not be removed from her service, *the Court* said it was good cause for discharge from her service; and after her discharge she might be removed.

See Vol. V. tit. Servants, § XXI.

Rex v. *Brampton*, *H.* 17 *Geo.* 3. 2 *Bott*, 317. 1 *Nol. P. L.* 435. 440. A female servant, during her service under a yearly hiring, was discovered to be with child, and therefore turned away by her master, who paid her her full wages, and 2*s.* 6*d.* over. Ld. *Mansfield* C. J. held that this was a good cause for dismissal; that the overseers could not, without such dismissal, remove her; and that the dismissal of a servant for immorality operated as a dissolution of the contract.

The same point was ruled in *Rex* v. *Welford*, *T.* 18 *Geo.* 3. 2 *Bott*, 319. 1 *Nol. P. L.* 439., with this addition, that the pauper, a man-servant, could not be discharged from his service, on account of a *supposed* criminal intimacy with a female servant in the same family.

If a servant be apprehended on a charge of bastardy, and be detained for some days from his service, he cannot gain a settlement.

Rex v. *Westmeon*, *M.* 22 *Geo.* 3. *Cald.* 129. 2 *Bott*, 320. 1 *Nol. P. L.* 440. *Robert White*, being settled at *Hartley*, was hired on 11th *October*, 1779, to *John Gibbs* of the parish of *Yapton* for a year; he entered on the same day, and continued in his service until the 6th *October*, 1780; when he was apprehended by a warrant, being charged by *Rebecca Haberden* with being the father of a bastard child, of which she had been delivered six months before: he was carried to an inn, and kept in custody by the parish officers till the 10th *October:* his master on the said 6th *October* settled with him at the said inn, saying, that he might not see him again, and deducted 1*s.* out of his wages, on account of his not serving the whole year; "though he said he had no objection to the pauper's gaining a settlement at *Yapton*, yet perhaps the other farmers might:"

the said master did not in any other manner assent to or dissent from the pauper's absence: the pauper, *after his being so taken, did not return to his said service.* — By Ld. *Mansfield* C. J. It is not necessary to enter into the question how far this is a crime, because the master has not discharged the pauper upon that ground: that it is wrong and an offence no man will deny; but whether to be animadverted upon both by the ecclesiastical and common law, is not material here: to be sure, it was not punishable as a crime at common law; and the statutes seem only to go to the punishment of the parents for the purpose of securing an indemnity to the parish. But here this offence is not assigned as the reason for discharging the servant; and if it were, I have no difficulty to say, that I think a master hiring a servant after an offence committed, and that not in his own house, shall not at the close of the year discharge him under this pretence: it is not a debauching of his servant, or turning his house as it were into a brothel. I do not go on that ground, nor upon the consent or implied agreement to go before the end of the year, for there was none: it was against the intention of both parties that it should affect the settlement; and if the case were to go upon that, it ought to be returned to the sessions to have that fact stated; there was no fraud intended, because there was no agreement; nor did the master mean either to prevent or promote the settlement; but he deducts a something to leave that question open, which it was the object of other persons who were interested to have discussed. The true point then is, supposing no wages paid and no agreement, here are four days wanting in the service, and it is by means of his own act that he becomes incapable of completing it. His conduct is an offence against morality and the laws, in what jurisdiction soever those laws are administered; and the consequences of it are equivalent to a wilful absence: I therefore think he did not gain a settlement: it is well put, that had an action been brought for his wages, he could not have recovered for these four days.

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Rex v. *North Cray, H.* 25 *Geo.* 3. 2 *Bott*, 322. *Cald.* 495. 1 *Nol. P. L.* 441. The pauper, absent nine days before the expiration of his service under a yearly hiring, was charged on oath with being the father of a bastard child, not then actually born: he was apprehended by warrant, and committed for want of security *October* 11th; the last day of his year he gave a bond of indemnity to *North Cray:* his master was during all this time one of the overseers; the pauper was discharged from bridewell by an order of magistracy, and the master paid him all his wages, except for the time of his imprisonment; and the Court held that here was no actual service, and that the pauper was absent through his own fraud.

Rex v. *East Kennett, M.* 26 *Geo.* 3. 2 *Bott*, 324. *Cald.* 562. 1 *Nol. P. L.* 443. The pauper, serving under a yearly hiring from *Michaelmas* at 7*l.*, hearing in *May* following that there was a warrant out against him for getting a bastard child, went and told his master he must be off, and asked him for money to go off with; his master gave him three guineas and a half; he ran away, leaving some clothes and his threshing tackle; two or three days after he was taken up, and obliged to marry the woman. After nine days' absence he returned to his master's house for his clothes, &c.; the master said to him, "Where are you going?"

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The pauper answered, "I do not know;" upon which the master said, "You may as well work for me again, as any other." The pauper agreed, and continued to work there without any fresh agreement, and at the expiration received, including the 3*l.* 13*s.* 6*d.* his 7*l.* wages, all but half-a-crown, which the master deducted for his absence. — The pauper when he ran away never thought of going back to him, but considered himself discharged. — Lord *Mansfield* C. J., adverting to the concluding part of the case, said, it shewed the fact, though it did not alter the law. "The servant desires to be off." How off? his service. He received his wages, and if not the whole, it was on account. He goes back, not on the old contract, but for his clothes, and a new agreement takes place. No settlement was gained.

Rex v. *Kenilworth*, *T.* 28 *Geo.* 3. 2 *T. R.* 598. 2 *Bott*, 328. 1 *Nol. P. L.* 434. 441. *Post.* § xvii. (6. *b.*) — *Buller* J. said, The circumstances of the pauper's having been apprehended on a charge of bastardy I lay out of the question; for it was competent to the master to receive him again after he was discharged out of custody, if he pleased.

Where the master of a yearly servant twenty-eight days before the end of the year gave up his business and paid off and discharged the servant, paying him his full wages, and telling him to go where he liked, and the servant took his wages, left the house and worked with another person, with the master's knowledge, during the twenty-eight days; Held that this was a dissolution of the contract.

Rex v. *Bray*, *T.* 54 *Geo.* 3. 3 *M. & S.* 20. 1 *Nol. P. L.* 422. Removal from *Bray* to *Great Marlow*, the sessions quashed the order, subject, &c. *John Butler*, the pauper, previous to *Michaelmas*, 1806, was settled in *Great Marlow*. At *Old Michaelmas*, 1806, he hired himself at yearly wages for a year to one *Hussey* of *Cookham*, as a servant in husbandry, and entered upon his service at that time. He continued to live with *Hussey* in *Cookham* until twenty-eight days before the expiration of the year, at which time *Hussey* gave up his farming business, sold his stock by public auction, and paid off and discharged the pauper, and all the other servants in husbandry, paying them their full wages; and he also then told the pauper and the other servants that they might go where they liked. The pauper having accepted his wages, took away his clothes and left *Hussey*'s house, and worked with another person, with *Hussey*'s knowledge, during the twenty-eight days which formed the remainder of the year. In support of the conclusion drawn by the sessions, were cited *Rex* v. *St. Bartholomew*, *Rex* v. *St. Andrew*, *Holborn*, and *Rex* v. *St. Mary*, *Lambeth*. — Ld. *Ellenborough* C. J. said, We take it that the sessions held this to be a dispensation; but then a question occurs, why they did so? What is to be the limit to this doctrine of dispensation if it is to be carried thus far? It should seem as if the master might, at the end of a day, or a fraction of a day, if he has no longer occasion for his servant, send him away, and thereby dispense with the whole year's service. But is not that absurd? Where, indeed, the relation of master and servant continues, but the master foregoes the benefit of actual service for part of the time, that has been held a dispensation; but here is every thing which can be predicated of a dissolution of the contract, for the master paid off and discharged the pauper with the rest of his servants, and the pauper left the house, and engaged himself with another master during the remainder of the year. I cannot but say that I am sorry for some of the cases on this subject, which have created such an artificial system: I think that not only the decision of the sessions in this case is unreasonable, but that several of the cases on which it professes to stand are

unreasonable also. — *Le Blanc* J. *Rex* v. *Bartholomew* was under special circumstances. Here the pauper, after quitting the service of *Hussey*, worked under a distinct engagement; and though not such an engagement as would gain him a settlement, still it was inconsistent with the continuance of his former contract. — *Bayley* J. The moment the pauper quitted the service he was to be at full liberty to contract a new relation, and he did so. — *Dampier* J. The master pays him his wages, and tells him to go whither he liked, and the pauper accepts his wages, and contracts a new relation during the time. Order of sessions quashed. R. v. Bray.

4. Of the Residence.

" *Forty days.*"] Less than forty days' residence in any parish will not gain a settlement. As in the case of *Goring* v. *Moltsworth*, *E.* 4 *Geo.* 2. *Sess. Ca.* 327. *Sett. & Rem.* 219. 1 *Barnard.* 436. 2 *Bott*, 277. 1 *Nol. P. L.* 423. A person was hired for a year, and served the year. His master lived at *Goring*, and kept a boat, which navigated from *Goring* to *London*, but the servant was not forty days in the whole year at the parish of *Goring*, but served out the year on board the boat. — By the Court: This was no settlement at *Goring*.

13 & 14 C. 2. c. 12. § 1. *ante*, p. 335. Forty days' residence necessary to a settlement

But it is not necessary that the servant reside forty days together without interruption. As in the case of *Greenwich* v. *Longdon*, *M.* 18 *Geo.* 2. *Burr. S.C.* 243. 2 *Bott*, 278. 1 *Nol. P.L.* 421. 3*d edit.* *George Wall* was hired for a year and served a year, as a livery-servant, at 7*l.* wages, to one Captain *Saunderson*, commander of the *William* and *Mary* yacht, who had a house and family at *Greenwich*, and resided there when not absent on the king's service. His master made frequent voyages to and from *Holland*, and he always attended him in the same; and he was never forty days together at *Greenwich*, but during his service he was there forty days at different times. — By the Court: It need not be forty days all together: it is sufficient if within the year he reside forty days in the whole.

Not necessary that the forty days be all together.

Rex v. *Denham*, *H.* 53 *Geo.* 3. 1 *M. & S.* 221. *Bott*, *Cont.* 142. 1 *Nol. P. L.* 430. 3*d edit.* On appeal the quarter sessions for the county of *Southampton* confirmed an order for the removal of *Charles Tranter*, his wife and family, subject, &c. And Ld. *Ellenborough* C. J. delivered the judgment of the Court. — This was a settlement-case upon a removal from *Basingstoke* to *Denham*, and the question was upon the residence necessary to confer a settlement by hiring and service; whether it was necessary there should be forty days' residence within the compass of a year, or whether, if the service were for several years uninterruptedly, a residence of forty days within those several years would be sufficient. The facts were these; the pauper was hired for a year to *George Smith*, and served that year: at the expiration of which he was hired to him for another year, and served half of it; and during that year and a half he was resident in *B.* for forty days, but he did not reside in *B.* for forty days, either within the first year, or within the half year, nor (as was admitted) within any one period of a year whilst he continued with *Smith*. The sessions were of opinion, that this residence was not sufficient, and we think their opinion right. By stat. 13 & 14 *C.* 2. *c.* 12.

The residence of forty days must be within the compass of a single year.

13 & 14 C. 2. c. 12.

Residence.

R. v. Denham.

1 J. 2. c. 17.

3 & 4 W. & M. c. 11.

8 & 9 W. 3. c. 30.

(a) *Ante*, p. 335, 336.

§ 1. poor persons coming to settle in any parish, if likely to be chargeable to the parish, may be removed within forty days after they so come to settle as aforesaid; and it is under this act that forty days' residence is required. By stat. 1 *J.* 2. *c.* 17. § 3. The forty days' continuance in a parish intended by stat. 13 & 14 *C.* 2. to make a settlement, shall be accounted from the delivery of notice in writing to one of the officers of the parish to which such poor person removes: which notice by stat. 3 & 4 *W. & M. c.* 11. § 3. is to be read in church the next Lord's day, and registered in the book kept for the poor's accounts. By the same stat. 3 & 4 *W. & M. c.* 11. § 7. if any unmarried person, not having child or children, shall be lawfully "hired into any parish or town for one year, such service shall be adjudged a good settlement therein, though no such notice in writing be delivered and published as aforesaid." And by stat. 8 & 9 *W.* 3. *c.* 30. § 4. "No person, so hired as aforesaid, shall be adjudged to have a good settlement in any such parish or township, unless such person shall *continue and abide* in the same service during the space of *one whole year*." Upon these clauses, (*a*) settlements by hiring and service now stand. It has been decided that so as there is a hiring for a year, and service for a year, it is not necessary the whole of the service should be under the yearly hiring, but service not under a yearly hiring may be connected with service under a yearly hiring, and both services, if uninterrupted, may be taken into the account: but it has never been decided that residences beyond the compass of a year can be connected; and as the legislature, by requiring a hiring for a year, and a continuance and abiding in the same service during the space of one whole year, seem to have contemplated something which was not to be complete in less than a year, but was to be complete within that period, we think we abide most closely by the words, and give effect to the most probable intention of the legislature, by holding that the whole residence must be within the compass of a single year. Suppose the same service to continue uninterruptedly for twenty years, and the servant to sleep twice in every of such twenty years at the same inn in travelling, and be at that inn the last night of his service, would it be expedient and reasonable that an inquiry extending over so long a period of time at detached intervals should be gone into for the purpose of ascertaining the settlement of a pauper? What notice could the officers of that parish have had that he was come to settle there? And yet there his settlement would be, if we were to hold that residence for forty days beyond the compass of a single year would do. We are therefore of opinion that a settlement in *Basingstoke* in this case was not established, and that the order of removal and the order of sessions, which proceeded upon the disallowing the settlement, should be confirmed.

When the last forty days' service is in different parishes, the settlement is where the servant lodges the last night.

Lowess v. *Lanstephan*, *E.* 16 *Geo.* 3. *Burr. S.C.* 825. 2 *Bott*, 286. 1 *Nol. P. L.* 422. *3d edit.* The pauper was hired for a year to *John Williams* of *Lanstephan*, where his master occupied his own estate. He continued with his master in *Lanstephan* till some time before *St. Peter's Tide*, when his master and family removed to *Lowess*, in which parish his master rented another farm. He continued with his master in *Lowess* till the 16th of *January* following, when his master and family removed to *Lan-*

stephan, and his master afterwards constantly resided there. But the pauper was sent back by his master to *Lowess*, to thresh the corn, and look after his master's cattle. The pauper staid in *Lowess* two or three nights and days, and ate and lodged there; and then returned again to *Lanstephan* in like manner as aforesaid; and so continued between the said parishes to the end of his year, which was the 17th of *May* following. The pauper never continued forty days together in either of the two parishes after the said 16th of *January*, but lived and resided as aforesaid more than forty days in the whole, in each. He verily believed he resided most at the latter part of his service in *Lanstephan*, and lodged there the last night; and went from thence in the morning to *Lowess*, and took some cattle of his master's from thence to the Hay-fair, where he finished his service. The Court held him to be last legally settled in *Lanstephan*.

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Lowess v. Lanstephan.

And in *Rex* v. *Hulland*, *E.* 21 *Geo.* 3. *Doug.* 657. *Cald.* 118. 2 *Bott*, 288. 1 *Nol. P. L.* 422. 3*d edit.* it was determined, that when a person has resided part of the year in one parish, and part in another, at different times and intervals, making, when added together, more than forty days in each, his settlement is in the parish where he lodged the last night.

Rex v. *Ashton*, *T.* 12 *Ann*, *Fol.* 88. *Sett. & Rem.* 23. 2 *Bott*, 273. 1 *Nol. P. L.* 420. 3*d edit.* A servant-maid was hired for a year in the parish of *Ashton*, where she served half a year; then her master, and she with him, removed to the parish of *Patshall*, where her master took another farm; the servant continued with him in the parish of *Patshall* for the other half-year; and the question was, whether she gained any settlement in either of these places; and if she did, in which of them?—By the Court: Here is what the act requires, a hiring for a year, and service for a year; for it is the same service, and the statute doth not tie it down to one place. If a person is hired to a master in one parish, and goes with him into another, and serves him for one whole year, the parish he continues last in for 40 days before the end of his year is the place of his settlement; and the reason why the forty days gain a settlement is, because he comes there with his master, and you cannot remove him from his master; and having continued with him forty days unremovable, he gains a settlement.

Service with the same master, but not in the same place where the hiring was, will gain a settlement in the last place.

Also in *Rex* v. *Iveston*, *E.* 23 *Geo.* 3. *Cald.* 288. 2 *Bott*, 289. 1 *Nol. P. L.* 422. 3*d edit.* The pauper being unmarried, was hired for a year to serve as a collier: *Iveston* and *Kyo* are two separate townships in the parish of *Lanchester*, and maintain their poor separately: he resided at *Kyo* from *Martinmas*, when he was so hired, till the *May-day* following, when he married; about fourteen days after his marriage, he took a cottage in *Iveston*, and without the privity of his master removed thither from *Kyo* with his wife, where they continued above forty days, and until about fourteen days preceding the expiration of his service, and then they returned to *Kyo*.—The Court were of opinion that this case was similar in principle to the case of *Rex* v. *Hulland*, and precisely that of *Lowess* (*ante*, 442.) and that they ought to be adhered to; and that the settlement was therefore in *Kyo*.

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And in *Rex* v. *Great Bookham*, *T.* 26 *Geo.* 3. *Cald.* 290. 2 *Bott.* 289. *n.* The same point came in question, but was given up, being considered as fully settled.

If a yearly servant serve forty days in A. then go with his master's leave to B. his father's parish, and there remain above forty days; then go to another parish to work for his master, and then for the three last days sleep in B., his father's parish, he gains a settlement in B.

Rex v. *Undermilbeck*, *M.* 34 *Geo.* 3. 5 *T. R.* 387. 2 *Bott.* 291. 1 *Nol. P.L.* 392. 396, 397. 428. Removal from *Undermilbeck* to *Dalton*. *John Dixon*, late husband of the pauper, was hired for a year to work as a waller with *J. Bowness* then of *Caldbeck*, at ten guineas *per annum*. He entered upon his service in the beginning of *April*, 1783, and continued with his master till *December* following, when his master having little to do in the walling business in the winter season, gave him leave of absence for six weeks to work for himself wherever he pleased, allowing 15*s.* out of his yearly wages. *Dixon* then went to his father's house in *Sawrey* and continued there seven weeks, being one week longer than he had leave for. About that time his master contracted with one *Braithwaite*, that he and his servant *Dixon* would assist *Braithwaite* in making some fence-walls in *Pennington*, where *Dixon* continued working with his master above forty days, the same being till within about three or four days of the end of the term; when he went away again to his father's house in *Sawrey*, with his master's consent; and whilst he so continued in *Sawrey*, the year's service with *Bowness* expired. During the time that *Dixon* worked in *Pennington* he slept in *Dalton*, but never worked a day's work in *Dalton*. When *Dixon* went the last time to his father's house in *Sawrey*, it was on the *Saturday*, and his year's service would not have expired till the *Tuesday* following. On the *Monday* morning he went to make up some fence-wall on his father's account in *Sawrey*, but was taken ill that afternoon, and continued out of health for some weeks afterwards. *Dixon* afterwards went to his master who paid him his wages, deducting 15*s.* for the six weeks' absence, and 2*s.* 6*d.* for the other week he was absent more than agreed for.—It was contended that the residence in *Sawrey* for the last three days could not be connected with the former service in that place, because *Dixon did not serve there at all during those three days;* he was not employed there by his master in any kind of service; therefore the last forty days service was in *Dalton*.—Ld. *Kenyon* C.J. It has been properly admitted that the contract was not dissolved by the servant's absence for seven weeks, because the master consented to it, and received part of the servant's earnings; and as the service continued in contemplation of law during the whole year, I think the servant was settled in *Sawrey*, where he slept the last night, he having before that time served there 40 days in the course of the year. For it has been decided after much argument, that the last day's service may be connected with any preceding service in the same parish, notwithstanding any intervening service elsewhere for 40 days.

The settlement will be at the place of the last forty days' service though the master have settlement .

Bishop's Hatfield v. *St. Peter's* in *St. Alban's*, *H.* 1 *Geo.* 1. *Fol.* 197. 2 *Stra.* 794. 2 *Bott.* 276. 1 *Nol. P.L.* 424. 3*d edit.* *Langley* was a huntsman to one Mr. *Arnold*, who lived sometimes in *Westminster*, and sometimes at his house in *Northamptonshire*, but Mr. *Arnold* had no settlement in *St. Peter's;* and *Langley* served the last 40 days of his year in the parish of *St. Peter* with his master Mr. *Arnold;* which the justices at sessions thought gained no settlement for *Langley* in *St. Peter's*. But the Court

of K. B., upon the order being removed by *certiorari*, quashed the order of sessions and held *Langley's* settlement to be in *St. Peter's*, by serving his master Mr. *Arnold* the last forty days of his year there, though his master *Arnold* had no settlement there.

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St. Peter's in *Oxford* v. *Chipping Wycomb*, *M.* 9 *Geo.* 1. 1 *Stra.* 528. *Fol.* 200. 2 *Bott*, 275. 1 *Nol. P. L.* 424. 3*d ed.* The master of the *Oxford* stage-coach hired a servant for a year, to stay in an inn in *Wycomb* where the coach baited, and to take care of the horses: he lived there for the whole year, and the master all the while lived in *Oxford*. The question was, where that servant gains a settlement, or whether any by that service? And by the whole Court, he gained a settlement in *Chipping Wycomb*, though his master never lived there.

The service may be in a parish where the master never lives, and so a settlement gained.

Rex v. *St. Peter's* in *Oxford*, *T.* 8 *Geo.* 1. *Sett. & Rem.* 139. *Fol.* 193. 1 *Stra.* 524. *Burr. S. C.* 422. 2 *Bott*, 274. 1 *Nol. P. L.* 424. 3*d ed.* Mrs. *Cook* lived with her son-in-law Dr. *Clavering* at *Christchurch* (extra-parochial), and hired a servant for a year, who was settled in *St. Peter's*. Mrs. *Cook* afterwards went to *Fawley* upon a visit; and she with her servant staid there for three months, and afterwards came back again to *Christchurch*, where the servant ended the year's service, being not forty days after her return. The question was whether this servant gained any settlement at *Fawley*, living with her mistress, who was only a visitor? And by the whole Court: The settlement of the servant doth not at all depend on the settlement of the master; for if a master hire a servant for a year, and after remove from one parish to another during that year, it may be properly said that the servant is hired in every parish he shall go into with his master; and the parish where he lives with his master the last forty days of his year is the place of his settlement. And it is not material to the servant, whether the master goes there under the capacity of gaining a settlement for himself or not; the servant goes there in the capacity of a servant; and it is like the case of a school-boy; he gains no settlement, but the servant that waits upon him will. And it was adjudged that the servant was settled at *Fawley*. See this particularly cited and stated in the following case of *Alton* v. *Elvetham*.

A servant will gain a settlement by service to his master though such master be a visitor only; and a servant may be said to be hired in every parish into which his master may go.

Rex v. *East Ilsley*, *M.* 12 *Geo.* 3. *Burr. S. C.* 722. 2 *Bott*, 284. 1 *Nol. P. L.* 424. 3*d edit.* The pauper, *James Allen*, was hired for a year, and so for two years afterwards successively, to the Earl of *Portmore*, to look after the said earl's running horses; and during the said three years removed from place to place with the said horses, the last ten months of which time he resided with the said horses at *East Ilsley*, which was a public place for exercising and training running horses; which said earl had not any house in *East Ilsley*, nor any estate there. The question was, whether a groom, residing at a public place, where his master had no house or estate, merely for the purpose of training running horses, should gain a settlement at that public place? And the Court were unanimous that this was a good settlement, being exactly the same case as that of the huntsman at *St. Alban's*, *post*, 448.

So a person who is hired as groom to some running horses, and goes from place to place to take care of them, will gain a settlement by residence at the last place, though his master had neither house nor estate there.

Alton v. *Elvetham*, *E.* 30 *Geo.* 2. 2 *Bott*, 280. 1 *Nol. P. L.* 424, 425. 3*d edit.* This case was argued the last term,

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borough with master, who went there merely for the season, held not to give a settlement. [But see Rex v. Bath Easton, post, 449.]

and the Court took time to consider of it; and this term, Ld. *Mansfield* C. J. delivered the resolution of the Court: This was an order made by two justices for the removal of the wife of the pauper and four children from the parish of *Elvetham* to the parish of *Alton;* and upon appeal to the sessions the same was there confirmed: but the sessions state the facts specially, that the parish of *Alton*, in the year 1722, gave a certificate to the father of the pauper to the parish of *Elvetham;* under which the father went to the parish of *Elvetham*, and has dwelt there ever since: then it states, the pauper and other children being born there, and that the pauper on the 29th of *August*, 1734, was hired for a year as a covenant-servant by Sir *Henry Calthorpe* at *Elvetham*, and served that year out in that parish; that at the expiration of this year, he was hired again as a covenant-servant by him for another year, and served that year, but it happened that the last forty days of the second year were at *Scarborough* in *Yorkshire;* that he did not at the end of the second year quit the service, but on the 29th of *August*, 1736, he applied to his master to make a new agreement for another year, when the master said it would be time enough when they returned home to *Elvetham;* whereupon he continued for about six weeks with his master at *Scarborough*, when they returned home to *Elvetham;* then he was hired for a third year, and served that year out at *Elvetham*, and continued in his service for seven years more, and his wages were advanced every year, and afterwards he quitted that service, and married, and had four children, mentioned in the order, which was, for removing his wife and four children from *Elvetham* (the husband having left his family) to *Alton*, which gave the certificate.—The justices considered him serving altogether in *Elvetham*, and that he could not gain a settlement there. It has been contended that they were in the wrong, for he ought to be considered as having gained a settlement in *Elvetham*, notwithstanding the certificate. That is not contended for directly, because service for a year of a certificate-person will not gain a settlement; therefore it is indirectly contended for, that he had gained a settlement: his master goes (probably for his health) to *Scarborough*, and happens to stay there forty days; and it is contended that the servant then gained a settlement at *Scarborough*, which discharged the certificate, and then he afterwards gained a settlement at *Elvetham*.—The general question is, whether this accidental service of forty days at *Scarborough* acquired a settlement to the servant? It is immaterial whether the master has or has not a settlement in the place where the service is, because that will not prevent the servant gaining a settlement: but the objection here is, whether the forty days at *Scarborough* are to be considered barely as a continuation of the service at *Elvetham*, or a new *bonâ fide* service at *Scarborough?* There are several cases where a servant, though locally absent, may yet be considered as continuing his service in the place to which he was hired. So if a servant was ill, and went to *Bath*, by the consent of the master, that would be a continuation of the service. Therefore the consideration here is, of convenience and inconvenience, of justice and injustice, which will have great weight, unless there are authorities which stand in the way. I will con-

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sider this, first, under the circumstances of the case; then, secondly, I will consider the authorities. The general ground upon which this must be determined, if there are no authorities, is this: substantially, the master lived at *Elvetham;* he hired his servant to be a servant there; the parish was jealous of the servant coming in there, and got a certificate from *Alton.* Sir *Henry* happens to go to *Scarborough,* as a sojourner for a particular purpose, not as an inhabitant. When they are to make an agreement for a third year, they both consider themselves as absent from home. It would be perilous for these public places of resort, if such a service were to gain a settlement. Besides, what fraud would be brought upon parishes, if settlements might be gained in this manner, when a parish trusts to certificates? Suppose a person in service has an accident upon the road by breaking a leg, and he stays forty days at a place, shall that be a settlement? Suppose he stays forty days with his master in a sea-port, being wind-bound, would that gain a settlement? The master's abode here is at *Elvetham,* which I lay great stress on. The domicil (as the civilians call it) of Sir *Henry* was not at *Scarborough.*—I shall next consider the authorities cited: the principal of which was the case of *Rex* v. *St. Peter's* in *Oxford,* 1 *Str.* 524. *ante,* p. 447. The Court will pay regard to former determinations for the sake of certainty. But if an authority were single, and plainly productive of inconvenience, the Court will in such case over-rule it. But the present authority does not at all contradict the doctrine I have been laying down. This case was cited to show, that a passage or transitory residence might gain a settlement. I shall state the case as it is in *Strange;* where it is said, that in the case of *Rufford* it was not doubted, but that hiring into an extra-parochial place would gain a settlement. And so *Powell* J. somewhere said, that if a servant were hired for a year in *Ireland,* and the service were performed here, it would gain a settlement. But here I cannot but observe, that it is a great pity that cases should get abroad under the sanction of great names, which being taken from notes that gentlemen took only for their own use, and not by any public officer appointed for that purpose, are incorrect often in the state of them. The present case, as reported in *Strange,* is most certainly misreported. It is stated that the pauper was hired for a year into *Christchurch,* without saying how or under what circumstance her mistress lived there; and that her mistress went upon a visit to *Fawley-court.* Now her mistress being a single woman, could not possibly have any abode in *Christchurch* but as a visitor or friend. And it is farther said, that the only doubt was, whether the settlement gained at *Christchurch* was superseded or not? That could not possibly be so. For she could by no means gain a settlement in *Christchurch,* which was not only an extra-parochial place, but a single house only, having been once a monastery, being in nature of one of the king's palaces, which may be extra-parochial. I mention this, to show the incorrectness of cases, which cannot be relied on. This case is also in *Foley,* 215. and *Cases of Settl.* 139. reported differently. But all of them together may serve to help us to the truth, and which upon inquiry I find to be this: Mrs. *Cook,* the mistress of the servant, had two daughters; one married to Dr. *Clavering,* dean of *Christ-*

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church; the other, to Mr. *Freeman* who lived at *Fawley-court.* And she lived alternately with these two gentlemen her sons-in-law; and was as much at *Fawley-court* as at *Christchurch,* and (as I observed before) it was not possible the servant should be settled at *Christchurch,* because it was an extra-parochial single house. This was, I think, the only material case cited at bar; but there is another which I have had mentioned to me, *Bishop's Hatfield* v. *St. Peter's* in *St. Alban's,* (*Foley,* 197.) where a huntsman was hired by one Mr. *Arnold,* who lived sometimes in *Westminster,* and sometimes at *Northampton,* and the servant resided, where the hounds were kept, at *St. Alban's;* and the only question was, whether the servant could acquire a settlement there by such service, as his master had none? and there was no doubt but he could; for he came exactly within the case of a stage-coachman, who was hired to serve at *Wycomb,* though the master lived at *Oxford;* where it was held, that the servant's settlement does not at all depend upon the master's. But that case was very different from the present; for the question was not, whether there was a continuance of service with the master in *Westminster* or *Northampton,* but he was settled by living in that place with the hounds; and the master, I suppose, might be probably a member of parliament, and might have a house to go to for hunting merely, which is a very common case in the neighbourhood of *London.* However, there is no precision in the case, on which the Court can rely; and upon the whole, I think it not at all inconsistent with our present resolution; which is, that in the present case the whole of the service was only a continuation of the service at *Elvetham.* However, I would have it observed in the present case, that I lay great stress on both the master and servant considering *Elvetham* as their home, as also upon the precedent and subsequent service, and upon the circumstances of the certificate. — There was another objection at bar, but not relied on: that it does not appear but that the husband may be living, and he is not removed, and may have gained a settlement since. But this the Court will not presume. If he be living, they must remove him after to his family. And both the orders were confirmed.

A hiring may be in an extra-parochial place, and a settlement may be gained by a service under it in a parish or township; and if the master and servant be at a watering-place during the last forty days, a settlement will be gained there.

Rex v. *St. Andrew's, Holborn, H.* 24 *Geo.* 3. 2 *Bott,* 289. 1 *Nol. P. L.* 405. 464. 467. 474. This case was first brought before the Court in *Trinity* term, 23 *Geo.* 3. and then stated as follows: The pauper *William More,* his wife and children, were removed from *St. Andrew's, Holborn,* to *Aston juxta Bridworth,* in the parish of *Great Bridworth,* in the county of *Chester.* The sessions quashed the order, and stated that the pauper *William More* was born in *Aston juxta Bridworth;* and being settled there about 1760, became a yearly hired servant to Mr. *Squire,* an attorney in *Furnival's Inn, London,* with whom he lived about eight years. The usual place of Mr. *Squire's* residence was *Furnival's Inn,* but he used frequently to go to *Bath* for his health, when the pauper always accompanied him. His stay, on those occasions, was sometimes four or five months together. He was always in lodgings there, and generally on the *South Parade,* in the parish of *St. James's* in *Bath.* During the latter part of the eight years, that is, during the last three years, Mr. *Squire* resided rather more at *Bath* than at *Furnival's Inn;* and the last

time the pauper was at *Bath* with him, Mr. *Squire* stayed several months in his usual lodging on the *South Parade*. The pauper quitted Mr. *Squire*'s service in *May*, 1768, having resided about four months previous thereto, that is, from the *Christmas* preceding, in *Furnival's Inn*: that *Furnival's Inn* is an extra-parochial place; and that the pauper had done no act to gain a settlement since he left Mr. *Squire*. A doubt arising on the argument, whether a removal might not be made to *Furnival's Inn*, the case was sent to be re-stated, and now came back with this addition, that *Furnival's Inn* was no township or vill within the meaning of stat. 13 & 14 *Car.* 2. *c.* 12., and that no removal had ever been made to it. — Ld. *Mansfield* C. J. It now appears that *Furnival's Inn* is not a vill within stat. 13 & 14 *Car.* 2. *c.* 12. The hiring there lays the foundation for a settlement, but none can be gained there. You must look back to the last place except *Furnival's Inn*, where forty days were served; that place is *Bath*; and it being now settled that settlements may be gained at watering places, the settlement was gained there, notwithstanding the *Scarborough* case. Therefore the order of sessions must be confirmed.

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Rex v. *Bath Easton*, *E.* 14 *Geo.* 3. *Burr.* *S. C.* 774. 2 *Bott*, 285. 1 *Nol. P. L.* 469. — The pauper about the latter end of *August*, 1763, was hired as a covenant-servant for a year, to the reverend Mr. *Robinson*, who then resided at his house at *Bath Easton*, as his only place of general residence. He entered upon the service, and served the year and some months. He served the first part of the year at *Bath Easton*, but, about the latter end of *April*, 1764, he attended Mr. *Robinson* with the rest of his family to *Exmouth*, where Mr. *Robinson* went for sea-bathing. Mr. *Robinson* hired by the week, at fourteen or fifteen shillings by the week, the whole of a small lodging-house at *Exmouth*, which belonged to an innkeeper, who kept it ready furnished solely for the purpose of letting it to strangers; in which he stayed for the space of ten weeks; during the whole of which time the pauper served him there. Mr. *Robinson* then hired, by the week, lodgings in another house in *Exmouth*, being obliged to quit the former on account of its being engaged to a lady and her niece from *London*, who came to *Exmouth* for the same purpose of sea-bathing. He stayed at the last mentioned lodgings, and the pauper with him, for the space of two months, except an absence of about three weeks on an excursion into *Kent*, where the pauper attended him: after which he returned to *Exmouth*, and the pauper with him, who continued in his service at *Exmouth* till his master discharged him, just before his leaving that place, and returning to his said residence at *Bath Easton*: which was when he gave up the lodgings last mentioned, at the expiration of the said space of two months. *Exmouth* is a place generally resorted to by persons from *Exeter* and *London* for sea-bathing: but merchants also resort to it from *Exeter* as to a village. Ld. *Mansfield* C. J. delivered the unanimous opinion of the Court, that the pauper's settlement was at *Exmouth*. This was a common hiring for a year: there is nothing particular in it. And in the case of a common hiring for a year, a service with the master gains a settlement to the servant in the place where the last forty days of such service were performed. Here the ser-

Residence of a yearly servant with his master at a sea-bathing place for forty days, will confer a settlement.

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vice with the master for the last forty days ended at *Exmouth.* There was no continuance of service with the master after the master's return to *Bath Easton.* In the case of *Alton* v. *Elvetham,* there were many particular circumstances: the servant was born at *Elvetham,* under a certificate from *Alton;* and could not gain a settlement there by his original hiring and service in that place; nor without a discontinuance of it, and a new subsequent hiring. But no discontinuance ever happened in that case; the service did not end at *Scarborough:* it continued. The servant at *Scarborough* proposed a new agreement for another year: his master said, it would be time enough when they returned home to *Elvetham*; whereupon the servant continued on, for about six weeks, until they returned to *Elvetham;* when he was again hired by his master for a third year, and served it out at *Elvetham,* and continued in his master's service for seven years more in *Elvetham.* So that it was a continuation of the original hiring: the contract did not end at *Scarborough.* The question, therefore, in that case was, whether serving his master, who resided at *Scarborough* as a sojourner, for about forty days, should gain the servant a settlement there, when his former hiring at *Elvetham* was not discontinued, nor ended at *Scarborough;* but, on the contrary, continued and went on until and after their return to the master's general residence at *Elvetham;* but that case does not lay it down generally, that no servant can gain settlements at places where people go to drink waters, though they serve their masters or mistresses there for forty days: if it does, it is wrong; for no such general rule ought to be laid down. We are all of opinion that this servant who went with his master to this place, and served him there for the last forty days of his service, which ended at this place, and was not at all continued at any further time or place, is legally settled there by serving the last forty days at it. — *Willes* J. strongly declared his assent to this opinion; and added, that he hoped it would be understood, that serving a master forty days at a public place gains a servant a settlement at that public place.

The servant need not lodge in his master's house

Rex v. *Whitechapel, E.* 11 *Geo.* 1. 2 *Sess. Ca.* 114. *Fol.* 146. 2 *Bott,* 275. 1 *Nol. P. L.* 468. A person was hired for five years to work at a glass-house in *Whitechapel,* at the rate of 10*s.* a week; but never lodged with his master in the house at any part of the time, but at another house in the parish. — By the Court: he has gained a settlement there; for being hired to serve above a year, and having served and resided in the same parish pursuant to such hiring, he hath fully complied with the statute, and it is not material where he lodged, so that it were within the parish.

Where a person during his service marries, and then lodges with his wife for the last forty days, in another parish than that where his service is performed, he nevertheless gains a settle-

Rex v. *Hedsor, T.* 18 *Geo.* 3. *Cald.* 51. 2 *Bott,* 287. 1 *Nol. P. L.* 468. Removal from *Little Marlow* to *Hedsor.* The pauper was hired for a year to Lord *Boston,* and served him as a gardener for several years in the parish of *Hedsor;* ninety-five days before the end of the 4th year, he married a woman of the parish of *Little Marlow,* and from the time of his marriage until the end of that year's service he lodged with his wife in *Little Marlow* forty nights, but not successively, but did not lodge for forty nights elsewhere after his marriage. It did not appear that Lord *Boston* had any property in *Little Marlow,* nor where the pauper lodged the last night of the year's service in

which he married. It appeared that he did not see Lord *Boston* within that year in which he married, nor had any consent to be absent those forty nights; and that he never performed any service in *Little Marlow* on account of his master; that he continued to serve Lord *Boston* several years after his marriage. — Order confirmed by sessions. — *Dunning* contended in support of these orders, that the inclination the Court had always shewn in favour of settlements need not be indulged in this case, as the servant gained a settlement by the first year's service. Formerly it was questioned whether the service ought not to be in the same house; and though it was thought sufficient if in the same parish, yet it had since been holden, that if a servant continued forty days in a parish in *his master's service*, the reason he gained a settlement by the forty days was, his coming into such parish *with* his master; and that the Court would not permit the servant to gain a settlement where his master had no property, and without his consent or knowledge, and clandestinely with respect to his master, and in fraud of the parish, who might not know where he slept, and therefore could not remove him. — *Wallace*, in reply, cited a variety of cases to shew that a man is settled where he lodges the last forty days, although not successive; that *Rex* v. *Castleton* (*a*) was in point; the only difficulty was, whether the want of the master's knowledge could make any difference? If his master's business were done as well as if he lodged in the family, which the case shewed it must have been, it could make none. — Ld. *Mansfield* C. J. the cases seem to have settled it. The other judges concurred. Orders quashed.

Residence. ment in the parish where he lodges. And this, though the master did not know where he lodged.

And in the case of *Rex* v. *Nympsfield*, *H.* 21 *Geo.* 3. *Cald.* 107. 2 *Bott*, 288. *n.* 1 *Nol. P. L.* 468. the same point came in question, but was given up by the counsel as being fully settled.

Rex v. *Sutton*, *T.* 34 *Geo.* 3. 5 *T. R.* 657. 2 *Bott*, 336. 1 *Nol. P. L.* 471. *H. Boardman*, the pauper, being settled in *Sutton*, was, about *Christmas*, hired for a year by Mr. *Kerfoot* of *Great Sankey*, to serve in husbandry for 7*l.* 10*s.*, and 5*s.* more in case the master approved of his service; he continued in that service, until by the visitation of God he was deprived of his reason about the beginning of *November* next following, when his father fetched him away to his own house at *Bold*, and in two or three weeks afterwards he received the wages of 7*l.* 10*s.*, but not the 5*s.*; and the father afterwards kept him at home as part of his family for about ten years in *Bold*, where the father died; the son all that time, as well as since, continuing in the same situation. The sessions on appeal confirmed the order by which he was removed from *Bold* to *Sutton*, and stated the above case for the opinion of the Court of K. B. — Ld. *Kenyon* C. J. The cases that have already been decided on this subject have settled the principle on which our judgment must proceed in this case. As this is a removal from *Bold* to *Sutton*, all we are called upon to decide in this case is, whether or not the pauper be now settled in *Sutton*? and whether the settlement which he gained in that place has or has not been superseded by a subsequent settle-

Yearly servant held settled in the parish where he had lived with and served his master for ten months, and not in the parish to which he had been sent as a lunatic, and where he had lived for the last two months of his year's contract.

(*a*) *Post*, title Poor, *Certificate*. And also Poor, *Settlement by Apprenticeship*.

Residence.

ment? for any question that may hereafter arise between the parishes of *Bold* and *Great Sankey* will not affect the case now before the Court. It is stated, that the pauper was hired for a year in *Great Sankey;* that he continued in that service as long as he was capable of performing it; but that in the course of the year he was deprived of his reason, and consequently rendered incapable of discharging his duty to his master. But in the consideration of questions of this kind it is immaterial whether the servant's incapacity to perform his service proceed from an infirmity of body or of mind. Where indeed the servant commits a crime, the master may apply to a justice to have him discharged; but if no such application be made, the relation of master and servant subsists. In this case there being no fault in the servant, nor any application to a magistrate to discharge him, (for which, indeed, there was no cause,) I am clearly of opinion, that the relation of master and servant continued during the whole year, and consequently that the pauper acquired a settlement by that service. If he had recovered his reason before the expiration of the year, the master might have been compelled to receive him again into his house. It was said by Ld. *Mansfield*, in *Rex* v. *Christchurch*, *Burr. S. C.* 497, that the absence of the servant on account of sickness will not prevent his gaining a settlement, and that it is immaterial whether or not such absence happen in the middle or at the end of the year. With regard to *Rex* v. *Sharrington*, though it was not argued, it appears that the Court exercised their judgment upon it, and I subscribe to the doctrine of it. These observations are sufficient to dispose of this case; but there is another question behind, and as probably the magistrates below will be called upon to make another order, I will beg to say a few words upon it for the sake of their information. That question is, whether supposing the pauper gained a settlement by reason of his service with *Kerfoot*, he is settled in *Great Sankey*, the parish where the master lived, and where the service was in contemplation of law performed, or in *Bold*, where the father lived and received his son for the last forty days of the year. And upon this question I have as little doubt as on the other point; being of opinion that the settlement is in *Great Sankey*, where the service was in law performed, though the servant did not in point of fact reside there the last forty days of the year. In general the servant is settled in the parish where he serves the last forty days; but I consider the residence with the father under these circumstances as a residence in an hospital. We should thwart our own feelings, and act contrary to humanity and principles of public policy, if we were to determine that the father in this case brought a burden on his parish by receiving his son into his house from motives of tenderness and affection. And it must be remembered that this is not a case *sui generis;* there are others that stand *in pari ratione.* In general a bastard is settled in the parish where he is born; but if he be born in a gaol, or house of correction, his settlement is in his mother's parish. And I think that the case of *Rex* v. *Sharrington* goes some way to warrant my opinion in this case; for I cannot consider the pauper's residence with his father as a performance of service with his master; he was there *diverso intuitu* in order to recover from his illness, and not for the purpose of serving his master. I am therefore clearly

of opinion that the pauper's former settlement has been superseded by the subsequent one which he gained in *Great Sankey*. The other judges concurred. Both orders quashed. *Residence.*

Rex v. *Mildenhall*, *H.* 60 *Geo.* 3. & 1 *Geo.* 4. 3 *B.* & *A.* 374. 1 *Nol. P.L.* 465. Removal from the parish of *Mildenhall* in the county of *Suffolk* to the parish of *Newmarket*, *All Saints*, in the county of *Cambridge*. The sessions on appeal quashed the order, subject to the opinion of the Court of K.B. on the following case: On the first *May*, 1817, the pauper, being a single man, let himself as a yearly servant to *Richard Bailey* of *Mildenhall*, in the county of *Suffolk*, and entered into his service on the same day. The pauper was employed by his master every day from the commencement of his service up to the 5th of *April*, 1818, to drive the mail cart to and from *Newmarket* and *Mildenhall*. For this purpose he started every night from *Mildenhall*, and arrived at *Newmarket* at about eleven o'clock in the evening; and after delivering the bags, &c. which generally occupied about an hour, went to bed at an inn in *Newmarket*, in a bed hired for him exclusively for a year, and paid for by his master. He slept until about four o'clock in the morning, when the mail-coach arrived at *Newmarket* from *London*, and the pauper used to get up and receive the *Mildenhall* mail-bags, and drive his cart back to *Mildenhall*, where he generally arrived about six o'clock. He then, after putting up his horse, &c., went to bed in a room provided for him in his master's house at *Mildenhall*, and slept two or three hours. He was employed during the rest of the day in *Mildenhall*, as his master chose, and sometimes, which was about eight or ten times in a month, he did not go to bed at all at *Mildenhall*. He kept all his clothes, and took all his meals in his master's house, and the room and bed in which he there slept were exclusively appropriated to him, and he considered that *Mildenhall* was his home, but that he took his night's rest at *Newmarket*. He kept no clothes, nor any thing else at *Newmarket*, and other persons occasionally slept in the same room there with him. From the 5th *April*, 1818, until the following 1st of *May*, he never drove the mail-cart at all, but lived wholly in his master's service at *Mildenhall*. On the 1st of *May*, 1818, he quitted Mr. *Bailey*'s service. — *Per Curiam.* Here the pauper was, by the nature of his service, compelled to wait a few hours in the middle of the night for the return of the mail. During that time he slept there; but that sleep was not his ordinary and sufficient rest; for after he returned to his master's house at *Mildenhall* he went to bed in his own room, which was there provided for his exclusive use. He did not therefore go to *Newmarket* as to his place of rest, and unless that were so, he could gain no settlement there. Besides, it was for the respondents below to establish affirmatively a settlement in *Newmarket*; and if that is left doubtful, the Court will not quash the order of sessions. But here, in fact, *Mildenhall* appears to have been the place of rest of the pauper during his service. The order of sessions is therefore right. Order confirmed. *As to the place of rest.*

§ IX. Settlement by Apprenticeship.

The statutes relating to the settlement of apprentices are the

following; which I will first exhibit together at one view, and then set forth the judgments of the Court of K. B. upon the several parts thereof.

The statutes 43 Eliz. c. 2. Binding of children apprentices.

Stat. 43 *Eliz. c.* 2. § 5. enacts, *That it shall be lawful for the churchwardens and overseers, or the greater part of them, by the assent of any two justices of the peace aforesaid, to bind any such children as aforesaid, to be apprentices, where they shall see convenient, till such man-child shall come to the age of four-and-twenty years, and such woman-child to the age of one-and-twenty years, or the time of her marriage; the same to be as effectual to all purposes, as if such child were of full age, and by indenture of covenant bound him or her self.*

51 G. 3. c. 80.

By stat. 51 *Geo.* 3. *c.* 80. after reciting that whereas by stat. 43 *Eliz. c.* 2. it is enacted, *That the churchwardens of every parish, and four, three, or two substantial householders there, as shall be thought meet, having respect to the proportion and greatness of the same parish and parishes, to be nominated yearly in* Easter *week, or within one month after* Easter, *in the manner therein* (a) *directed, shall be overseers of the poor of the same parish; and that it shall be lawful for the said churchwardens and overseers, or the greater part of them, by the assent of two justices of the peace, to bind the children of such parents as shall not by the said churchwardens and overseers, or the greater part of them, be thought able to maintain their children, to be apprentices: And whereas in divers small parishes two persons only have been annually appointed to act in the capacity of churchwardens as well as overseers of the poor: And whereas divers indentures for the binding of parish apprencices, have been executed and signed by such two persons, purporting to be the churchwardens and overseers of such parishes; but, by reason that the said indentures have not been signed by distinct persons as churchwardens and other distinct persons as overseers, such indentures have been or may be deemed to be void:* it is enacted, *that all indentures for the binding of parish apprentices, which have been heretofore executed and signed by two persons only, acting or purporting to act in the capacity of churchwardens as well as of overseers of the poor, and also all such indentures as shall hereafter be so signed, shall be considered as good, valid, and effectual, as if the same had been executed and signed by distinct persons as churchwardens, and distinct persons as overseers of the poor, according to the said recited act; any thing therein or in any other act contained to the contrary thereof notwithstanding.*

Indentures which have heretofore been signed by two persons only, acting as churchwardens and overseers, to be valid.

§ 2. *Provides, that nothing in this act contained, shall extend to do away or alter any decision which may have taken place in any court of law, respecting the binding of any parish apprentice, or the settlement of any poor person before the passing of this act.*

Act not to affect any prior decision in any court.

In *Rex* v. *St. Margaret's, Leicester, M.* 59 *Geo.* 3. 2 *B. & A.* 200. 1 *Nol. P. L.* 503, 504. It was determined, that stat. 51 *Geo.* 3. *c.* 80. extends to parishes where there are three officers only, one of whom acts as churchwarden as well as overseer; and therefore, an indenture signed by two parish officers, one of whom acted in a double capacity, was held to be valid. Case: Removal from *St. Margaret's, Leicester,* to *Foxton,* in *Leicestershire.* The sessions on appeal

Stat. 51 G. 3. c. 80. extends to parishes where there are three officers only, [one] of whom [acts] as churchwarden as well [as] overseer.

(a) Sed vide stat. 54 *Geo.* 3. c. 91. *ante,* p. 2.

quashed the order, subject to the opinion of the Court of K. B. on the following Case: *William Barker*, the husband of the pauper, had a derivative settlement in the parish of *Foxton*, and was bound apprentice by a parish indenture, dated 30th *April*, 1791, to *Richard Warburton* of *Great Wigston*. The indenture witnessed, that *Thomas Chapman* and *Thomas Iliffe*, churchwardens of the parish of *Foxton*, and the said *Thomas Chapman* and *Thomas Coleman*, overseers of the poor of the said parish, do put and place *William Barker*, apprentice, &c. It was duly allowed by two magistrates, but executed by *Thomas Chapman* and *Thomas Coleman* only. The pauper's husband served a sufficient time under it to gain a settlement in *Wigston*, if the indenture were valid. It was admitted that *Thomas Chapman* and *Thomas Iliffe* were the two churchwardens of *Foxton*, at the time when the same *Thomas Chapman* and *Thomas Coleman* were appointed overseers of the poor, and that these persons were the officers of the parish in the year comprehending the 30th *April*, 1791, the day on which the indenture was executed. The question was, whether the indenture was valid or not? — After argument, *Abbott* C. J. said, this act of parliament was a remedial act, and ought therefore to receive a liberal construction; and I do not think, that in holding that this case is within it, we put any forced construction upon its provisions. This case is clearly within the mischief of the act, and I think within the fair meaning of the words by which it is remedied. I am therefore of opinion, that the 51 *Geo.* 3. *c.* 80. extends not only to cases where *both* the parish officers *act in a double capacity*, but to those also where only *one* of them is in that situation. The decision of the sessions was therefore right. — *Bayley* J. This act was passed almost immediately after the determination of this Court in *Rex* v. *All Saints, Derby*, 13 *East*, 143. And there only one of the officers acted in a double capacity. It was to remedy the inconveniences resulting from that decision that the act was passed: I think it is not a forced construction of it, (when it is admitted that its provisions include the case of a double defect,) to hold that they also extend to a case of a defect in one parish officer only. — Order of sessions confirmed.

51 G. 3. c. 80.

R. v. St. Margaret's, Leicester.

And by stat. 54 *Geo.* 3. *c.* 107. after reciting that whereas by stat. 43 *Eliz. c.* 2. it is enacted, that it shall be lawful for the churchwardens and overseers of the poor of any parish, or the greater part of them, by the assent of two justices of the peace, to bind the children of such parents as shall not (by the said churchwardens and overseers or the greater part of them) be thought able to maintain their children, to be apprentices: And whereas divers parishes contain within themselves several townships, hamlets, or chapelries, each of which separately maintains its own poor: And whereas in such parishes the churchwardens are for the most part sworn into their offices as churchwardens of the whole parish, although in truth and in fact they act as churchwardens of the separate townships, hamlets, or chapelries therein contained: And whereas divers indentures for the binding of parish apprentices have heretofore been signed and executed by a person or persons styling himself or themselves, and stated in such indentures, to be churchwarden or churchwardens, chapelwarden or chapelwardens, of the township, hamlet, or cha-

54 G. 3. c. 107.

54 G.3. c.107. pelry binding such poor apprentices: And whereas such person or persons have not been sworn into the office of churchwarden or chapelwardens of such township, hamlet, or chapelry, but of churchwarden of the parish wherein such township, hamlet, or chapelry is contained; it is enacted, that all *indentures* for the *binding of poor apprentices*, which have been heretofore signed and executed, or which shall hereafter be signed and executed by a person or persons who at the time of his or their signing and executing such indenture, *acted as churchwarden or churchwardens*, chapelwarden or chapelwardens, of the township, hamlet, or chapelry binding such poor apprentice, shall be deemed and taken to be as good, valid, and effectual, as if the same had been signed and executed by a person or persons actually sworn into the office of churchwarden or chapelwarden of such township, hamlet, or chapelry: Provided always, that such person or persons shall have been duly sworn into the office of churchwarden of the *parish* wherein the township, hamlet, or chapelry, binding such poor apprentice, be contained, or into the office of churchwarden or chapelwarden of such township, hamlet, or chapelry.

Indentures made valid, although the churchwardens, &c. were not sworn in.

Such indentures to be valid if executed by the overseers of the poor of any township, &c.

§ 2. Enacts, that all indentures for the binding of poor apprentices, which shall have been heretofore signed and executed, or which may hereafter be signed and executed by the *overseers of the poor* of any township, hamlet, chapelry, or place, and the *churchwarden* or churchwardens, chapelwarden or chapelwardens, acting for or appointed in respect of such *township, hamlet, chapelry*, or place, or the major part of them, shall be deemed and taken to be as good, valid, and effectual as if the said indentures had been signed and executed by such overseers and the churchwardens of the *parish* wherein such township, hamlet, chapelry, or place is situate, or the major part of them.

Not to affect settlements.

§ 3. Provides that nothing herein contained shall be construed to alter, impeach, or *affect the settlement* of any person, for whose removal any order of justices shall have been duly made before the passing of this act.

1 & 2 G. 4. c. 32. Stat. 1 & 2 *Geo.* 4. *c.* 32. after reciting that "Whereas in divers parishes, townships, hamlets, chapelries, and places in *England*, for a long period of time, only one churchwarden or chapelwarden has been annually appointed, where two or more churchwardens or chapelwardens had been formerly been* appointed for each of such parishes, townships, hamlets, chapelries, or places: And whereas divers indentures for the binding of parish apprentices, and certificates of the settlements of poor persons, which may have been executed and signed by such single churchwarden or chapelwarden, acting in and for a parish, township, hamlet, or place for which formerly two or more churchwardens or chapelwardens had been appointed, may on that account, if contested in a court of law, be deemed to be null and void: And whereas much litigation has recently arisen between parishes, owing to the discovery of such defect as above-mentioned in the appointment of churchwardens and chapelwardens; and it would tend to prevent further litigation, if such indentures and certificates as before-mentioned were in certain cases declared to be valid and effectual:" Enacts, that from and after the passing of this act (*viz.* 28th *May*, 1821.) all *indentures for the binding of parish*

Sic.

apprentices, and *certificates of the settlement or settlements of poor persons*, which have been, previous to the passing of this act, executed or signed by one churchwarden or chapelwarden, acting or purporting to act in the capacity of churchwarden or churchwardens, chapelwarden or chapelwardens, for any parish, township, hamlet, chapelry, or place in *England*, for which two churchwardens or chapelwardens had formerly been appointed, shall be deemed and taken to be as good and effectual to all intents and purposes as if the same indentures or certificates had been executed by one or more churchwarden or chapelwarden, churchwardens or chapelwardens, legally appointed. See *Rex* v. *Inhabs. of Catesby*, 2 *B. & C.* 814. *post*, § xiv. 1.

1 & 2 G. 4. c. 32. Certain indentures and certificates of apprenticeship declared valid.

§ 2. Nothing in this act contained shall be construed to affect or set aside any decision or judgment made or given in any court of judicature respecting any such indentures or certificates, or to alter, impeach, or affect the settlement of any person for whose removal any order of justices shall have been duly made, previous to the passing of this act, or to legalize or make valid any indentures or certificates to be signed or executed, as hereinbefore-mentioned, after the passing of this act.

Not to affect decisions already made.

By stat. 3 *W. c.* 11. § 8. it is enacted, *That if any person shall be bound an apprentice by indenture, and inhabit in any town or parish, such binding and inhabitation shall be adjudged a good settlement.*

3 W. c. 11. Apprenticeship, a settlement.

By stat. 12 *Ann. st.* 1. c. 18. § 2. If any person shall be an apprentice bound by indenture to any person who did come into or shall reside in any parish, township, or place, by means or licence of a certificate, and not afterwards having gained a legal settlement in such parish, township, or place; such apprentice, by virtue of such apprenticeship, indenture, or binding, shall not gain any settlement in such parish, township, or place; but every such apprentice shall have his settlement in such parish, township, or place, as if he had not been bound apprentice to such person.

12 Ann. st. 1. c. 18. Apprentices to certificated persons.

And by stat. 9 & 10 *W. c.* 11. it is enacted, " *That no person or persons whatsoever, who shall come into any parish by any such certificate as aforesaid, shall be adjudged by any act whatsoever to have procured a legal settlement in such parish, unless he or they shall really and* bonâ fide *take a lease of a tenement of the value of ten pounds, or shall execute some annual office in such parish, being legally placed in such office.* . . .

9 & 10 W. c. 11. No certificated person has a legal settlement in any parish, unless he take a tenement of 10l. per ann. or execute some parish office.

By stat. 8 *Ann. c.* 9. § 35. The full sum of money received, or in anywise directly or indirectly given, paid, agreed, or contracted for during the term aforesaid, with or in relation to every such clerk, apprentice, and servant, shall be truly inserted and written in words at length in the indenture; and the indenture shall bear date upon the day of the signing, sealing, or other execution of the same.

8 Ann. c. 9.

By § 37. The indentures shall (at the option of the party concerned) be brought or sent either to the head office, or to some of the stamp collectors, within two months after the date, signing, or execution thereof; and on producing the same, the duties shall be paid: if to the receiver-general, then the indenture shall be stamped: and if to the collector, he shall indorse thereon a receipt for the monies paid, in words at length, bearing date the day on

8 Ann. c. 9. which such payment shall be made, and shall subscribe his name thereto, and deliver it back to the bringer thereof.

By § 38. For the purpose of stamping, the indentures shall, within fifty miles of the weekly bills of mortality, be brought to the head office within three months; and at a greater distance, within six months.

By § 39. If the indentures have not the full sums as aforesaid, inserted as aforesaid, or be not stamped or tendered to be stamped as aforesaid, they shall be void.

But by § 40. Apprentices placed out at the public charge of any parish or township, or by or out of any public charity, are exempted from the duty in respect of the money paid with such apprentice, (*viz.* that in § 32. now repealed by stat. 44 *Geo.* 3. *c.* 98. § 1.) *Vide* stat. 55 *Geo.* 3. *c.* 184. *Sched.* Part I. title Apprenticeship, &c. Vol. I. p. 134. (*a*)

And by § 45. Where any thing, not being money, shall directly or indirectly be given, assigned, conveyed, delivered, contracted for, or secured, to or for the use or benefit of any master with such apprentice, the duties shall be answered and paid for the full value thereof.

9 Ann. c. 21. And by stat. 9 *Ann.* *c.* 21. The former duties are made perpetual.

Note. In this latter act, the words *or other consideration*, are substituted for the words *thing or things* in the former act.

Indentures to be stamped. For the regulations of the binding of parish apprentices. See stat. 56 *Geo.* 3. c. 139. title Apprentices, Vol. I.

44 G. 3. c. 98. Stamp duties. By stat. 44 *Geo.* 3. *c.* 98. the former duties under the care of the commissioner for managing the duties upon stamped vellum, parchment, and paper (*b*), were to cease and determine from 10th *October*, 1804; and new stamp duties were imposed by schedule (A.) of that act. These were again repealed by stat. 48 *Geo.* 3. *c.* 149. and the new duties granted by that act were again repealed by stat. 55 *Geo.*3. *c.* 184.; by the schedule of which act, Part

55 G. 3. c. 184. I., the following stamp duties are payable upon indentures of apprenticeship.

If the sum of money, or the value of any other matter or thing which shall be paid, given, assigned, or conveyed, or be secured to be paid, given, assigned, or conveyed, to or for the use or benefit of the master or mistress, with or in respect of such apprentice, clerk, or servant, or both the money and value of such other matter or thing shall not amount to 30*l*. - - - - - - - - - £1 0 0

If the same shall amount to £30 and not to £50			2	0	0
————————	50 - -	100	3	0	0
————————	100 - -	200	6	0	0
————————	200 - -	300	12	0	0
————————	300 - -	400	20	0	0

(*a*) *Rex* v. *Oadby*, *E.* 58 *Geo.* 3. 1 *B.* & *A.* 477. The premium given by the parish officers upon the binding out of a poor apprentice need not be set out in the indenture in words at length; such an indenture being exempted from any duty by 8 *Ann.* *c.* 9. § 40., and the insertion of the premium being required for no other purpose but to ascertain the amount of the duty.

(*b*) *Viz.* Those granted on indentures of apprenticeship by the statutes enumerated in Vol. I. p. 133. note (*b*).

If the same shall amount to £400 and not to £500	£25	0	0	55 G. 3. c. 184.
——————— 500 - - 600.	30	0	0	
——————— 600 - - 800	40	0	0	
——————— 800 - - 1000	50	0	0	
——————— 1000 or upwards - -	60	0	0	
And where there shall be no such consideration as aforesaid, moving to the master or mistress, if the indenture or other instrument shall not contain more than 1080 words - - - - - - -	1	0	0	
And if the same shall contain more than that quantity - - - - - - - - -	1	15	0	

The *Exemptions* are, " of indentures or other instruments placing out *poor* children apprentices, by or at the sole charge of any parish or township, or by or at the sole charge of any public *charity*, or pursuant to stat. 32 *Geo.* 3. *c.* 57. for the further regulation of parish apprentices." Parish indentures.

" And all assignments of such poor apprentices; provided there shall be no such valuable consideration as aforesaid given to the new master or mistress, other than what may have been or shall be given by any parish or township, or by any public charity." Assignments of parish apprentices.

Stat. 13 & 14 *Car.* 2. gives power to remove persons within the space of forty days after they come to reside, but no power to remove them after the said forty days; and consequently where the overseers have neglected to remove them for forty days, they become afterwards *unremoveable.* The statutes of *J.* 2. and *W.* 3. do restrain such forty days' residence to be after notice in writing; but (besides that since stat. 35 *Geo.* 3. *c.* 101. settlements by notice and residence are out of the question) the latter clause of the statute of *W.* 3. takes off that restriction with regard to apprentices; and the reason thereof is, because such notice would be to no purpose, for that the justices cannot, upon the complaint of the overseers, remove the apprentice from his master; that is to say, they cannot upon complaint of the overseers make void the indenture between the master and his apprentice, by which the apprentice is bound to live with his master, and the master is bound to keep him; for this can only be done upon the complaint of the master or apprentice: and continuing forty days unremovable without notice is the same thing as continuing forty days removable, but not removed after notice: and consequently the party hath gained a settlement. And it is possible that the apprentice may gain as many settlements as there are spaces of forty days in the term of his apprenticeship; and where he serves the last forty days, there is his last settlement: consequently, he may gain a settlement long before his master shall gain one; as where his master's settlement shall arise from executing an annual office: or he may gain a settlement, whilst his master shall gain none; as when he resides upon a tenement under 10*l.* a-year: and of consequence the master may be removed, when the apprentice cannot be removed; and in such case the master shall be necessitated to apply to the justices to compel the apprentice to go along with him. General exposition of the statutes.

Under title **Apprentices**, Vol. I. are stated those statutes relating

13 & 14 C. 2. c. 2.

to *Apprentices*, which do not bear any direct relation to questions of settlement, and are therefore, for the most part, omitted in this place.

§ I. and II. of that title shew *who may take apprentices*, and *who are compellable to be bound apprentices*, according to the several statutes relating thereto. — The order in which this present section will be treated will be,

1. *By what instrument the binding shall be.*
2. *Who may be parties.*
3. *Of the execution of the deed of apprenticeship.*
4. *Of the time for which it may be.*
5. *Of binding parish apprentices, and allowance by the justices.*
6. *Of the stamp.*
7. *Of the consideration and duty thereon.*
8. *Of the contract.*
9. *Of residence.*
10. *Of service with different masters.*
11. *Of service under assignment of the indenture.*
12. *Of service, the indenture being delivered up; (and herein of the delivering up of parish indentures.)*
13. *Of evidence relating to indentures of apprenticeship.*

§ IX. (1.) By what Instrument the Binding must be.

(As to the *binding* of poor apprentices, see more particularly, tit. Apprentices, Vol. I. § IV.)

Binding must be by indenture, parol binding insufficient.

Stat. 3 *W. & M. c.* 11. § 5. requires, in conformity to stat. 5 *Eliz. c.* 4. that the binding must be by *indenture*, i. e. by deed indented; a "deed being a writing sealed and delivered by the parties." 2 *Blac. Com.* 295. (See p. 351, 352.)

Stat. 5 *Eliz. c.* 4. seems only to refer to binding infants, which if done by deed-poll is bad. *Smith* v. *Birch*, 1 *Bott*, 528.

Under the 3 *W. & M. c.* 11. it was necessary that the instrument should be actually indented. *Rex* v. *Mellingham*, 2 *Bott*, 363. 1 *Sess. Ca.* 330.

31 G. 2. c. 11. Person bound apprentice by deed, &c. though not indented, being first duly stamped, is entitled to a settlement where apprenticed.

But stat. 31 *Geo.* 2. *c.* 11. § 1. enacts, that no person who shall have been bound an apprentice, or who shall hereafter be bound an apprentice, by any deed, writing, or contract, not indented, being first legally stamped, shall be liable to be removed from the town, parish, or place where he or she shall have been so bound an apprentice, and resident forty days, by virtue of any order of removal, granted by two justices of the peace of any county, riding, division, city, borough, town corporate, or place, or by virtue of any order of the justices at their general or quarter sessions, by reason or on account of such deed, writing, or contract not being indented only.

But this act does no more than cure the want of *indenting*. The binding must still be by deed. It must therefore be in writing, and have the other formalities of a deed. *Rex* v. *Mawman*, *Burr. S. C.* 290. *Rex* v. *Stratton*, *Burr. S. C.* 272. 1 *Nol. P. L.* 450.

The agreement must be by deed.

Rex v. *Ditchingham*, *T.* 32 *Geo.* 3. 4 *T. R.* 769. 2 *Bott*, 377. 1 *Nol. P. L.* 497. The pauper, *H. Cook*, at eight years of age was placed out by the parish officers of *B.* to a parishioner,

under the following agreement, which was written on a leaf of the parish book, together with several other agreements of the same sort, viz. "*August* 7th, 1774. At a general parish meeting, held at the parish of *B.* this day, it is agreed that *R. Fisher* shall take *H. Cook* and maintain her after the manner of an apprentice, with washing, lodging, clothing, &c. from this day until *Michaelmas*, 1780; *R. Fisher* to have 20*l.* with her, and at the expiration of the said time to double clothe her; witness my hand, *R. Fisher.*" This agreement was not stamped.—The Court said, That although the act of parliament dispensed with the indenture of the deed, still the binding must be by deed. 31 G. 2. c. 11.

§ IX. (2.) Who may be Parties.

An infant may bind himself.

Newbury v. *St. Mary's* in *Reading*, *H.* 3 *Geo.* 2. *Fol.* 154, *And.* 373. 2 *Bott*, 363. A poor boy of fourteen years of age bound himself apprentice for seven years to a weaver. It was argued that this was not a binding according to the statute, and therefore did not gain a settlement; and that the indenture was void, because an infant could not bind himself. But by the Court: It did gain him a settlement; for an infant may make an indenture for his own benefit.

An infant of eight years may be bound.

So also in *Rex* v. *Saltern*, *E.* 24 *Geo.* 3. 1 *Bott*, 613. 1 *Nol. P.L.* 498. 507. It was held to be no objection to the binding, that the party bound was of the age of eight years. It was also said by the counsel, and not denied by the Court, that *unfitness* was a matter to be determined by the sessions on evidence.

So also in the following case of *Rex* v. *St. Petrox* in *Dartmouth*. *Et vide Rex* v. *Arundel*, *post*, p. 471., and stat. 56 *Geo.* 3. *c.* 139. Vol. I. p. 138.

And the master may also be an infant.

In *Rex* v. *St. Petrox* in *Dartmouth*, *H.* 31 *Geo.* 3. 4 *T. R.* 196. 2 *Bott*, 377. 1 *Nol. P. L.* 498. The father of the pauper's husband agreed with *Mary Hayne*, widow, to bind his son, then aged about *eight years*, an apprentice to *R. H.*, son of *M. H.*, who was then between the *ages of fourteen and fifteen*, and was then resident in his mother's house as a part of her family, and had no habitation or business of his own. And it was admitted by the bar, and agreed by the Court, that this indenture of apprenticeship was not absolutely void, on account of the infancy of the parties; and that unless there were some other objection, the pauper gained a settlement by virtue of the apprenticeship. (See this case, *post*, page 467.)

The master's condition is immaterial.

A female may be bound apprentice by the parish to a day-labourer, to learn housewifery; and it will be good, unless it is found to be fraudulent. *Rex* v. *St. Margaret's*, *Lincoln*, *Burr. S. C.* 728. 1 *Bott*, 610. 1 *Nol. P. L.* 497. 4*th edit.* 2 *Nol. P. L.* 310. 3*d edit.*

So the master may have no right to take an apprentice.

Anon. T. 9 *Ann.* If an apprentice be bound to a master who has no right to take an apprentice, yet a settlement will be gained by service under such an indenture.

And according to *St. Bride's* v. *St. Saviour's*, *H.* 4 *Ann.* 2 *Salk.* 533. The apprentice will gain a settlement in the parish where he serves, although his master have no settlement there.

A person who is bound ap-

In *Rex* v. *Chesterfield*, *T.* 9 *W.* 3. 1 *Bott.* 527. 2 *Salk.* 479. 1 *Nol. P. L.* 497. A servant was put out by his late master to a

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prentice by the act of two other parties, without his own intervention, can gain no settlement by a service under such a binding.

barber, who was to teach him to shave and make perriwigs, for which he was to have 5*l.* The servant was no party to the covenants between his master and the barber. — And the Court adjudged it not to make a settlement, because it was no service, and the servant was no more than a boarder there for his education, which was no service to make a settlement.

The apprentice must be a party to the deed though an infant.

Rex v. *Cromford*, *M.* 47 *Geo.* 3. 8 *East*, 25. 1 *Nol. P. L.* 498. The pauper's husband went on 1st of *May*, 1796, being then fourteen years of age, as an apprentice to *N. Kniveton* of *Wirksworth*, weaver, and continued to serve him as an apprentice for five years. The following indenture was executed by *N. K.* the master, and *Job Higton* the father of *William*, but *not by W. H.* himself. "This agreement, made the 1st day of *May*, 1796, between *N. K.* weaver and *J. H.* miner; and the said *N. K.* shall teach or cause to be taught *W. H.* the son of *J. H.* the art and mystery of weaving, &c. in the best way he can, for five years from the date above; and that *N. K.* shall find *W. H.* all utensils belonging to the said business; and that *W. H.* shall receive of *N. K.* half of what he earns, and the remainder to *N. K.*; to which we have interchangeably set our hand and seal, the date above written. (Signed and sealed by *N. K.* and *J. H.*)" *W. H.* did not execute or become a party to any other indenture. — By Ld. *Ellenborough* C. J. Here is neither a binding of the son himself apprentice, nor, if I may so say, of his parent for him, for there is no contract for his serving his master; nothing to bind the son to serve. He might serve in fact, but was under no obligation to do so: he only continued to be taught as long as he pleased, but was not obliged to stay. This was no apprenticeship.

An indenture of apprenticeship is void if the pauper (though assenting to the contract) does not become a party to the deed.

Rex v. *Ripon*, *H.* 48 *Geo.* 3. 9 *East*, 295. *Bott*, *Cont.* 152. 1 *Nol. P. L.* 498. Removal from *Ripon* to *Darlington*, and quashed by the sessions. The pauper, being twenty-three years of age, was put apprentice by her father-in-law with her own consent, to one *Husbands* in *Hunton*. She was present at the making of the agreement; but the indenture was only executed by the master and her father-in-law, but not by herself: neither was it ever tendered to her for that purpose, though she lived under it with her master for nearly twelve months in *Hunton*. — And, without argument, *by the Court*, Is it possible to maintain this to be a competent binding of an adult who was no party to the indenture? The relation of master and apprentice did not exist.

A father has, at the common law, no authority to bind his infant son apprentice without his assent; and consequently, where an indenture of apprenticeship was executed by the master and the father of the apprentice, but not also by

Rex. v. *Inhab. of Arnesby*, *E.* 1 *Geo.* 4. 3 *B. & A.* 584. *Removal from Arnesby in Leicestershire to Abthorpe in Northamptonshire.* On appeal against the order, it appeared, that the pauper had served some years, under an indenture of apprenticeship in *Abthorpe*. The indenture stated, that *Samuel Simcoe*, son of *Samuel Simcoe*, of *Kettering*, in the county of *Northampton*, glover, by and with the consent of his said father, did put himself apprentice to *William Sheppard*, of *Abthorpe*, in the county of *Northampton*, framework-knitter, to learn his art, and with him, after the manner of an apprentice to serve, from the 10th day of *May*, 1802, unto the full end and term of seven years from thence next following to be fully complete and ended. It was, in all respects, regular, except that it was executed only by the father of the pau-

per and the master, and not by the pauper himself. The sessions thought the indenture invalid, and quashed the order of removal. — In support of the order of sessions, *Rex* v. *Cromford*, 8 *East*, 25., *ante*, p. 462, was cited. *Contra*, *Rex* v. *Houghton-le-Spring*, *ante*, p. 351, and 4 *Com. Dig.* tit. *Justices of the Peace*, B. 55, where it is laid down that a father may, at the common law, bind his infant son apprentice. — *Abbott* C. J. The words of the statute of the 3 *W. & M. c.* 11. are, "that if any person shall be bound an apprentice, by indenture, and inhabit in any town or parish, such binding and inhabitation shall be adjudged a good settlement." Before, therefore, any settlement can be gained, the Court must see that the party is bound by indenture. Now the ordinary mode is, for a party to bind himself, by executing the indenture. Even if he does not do that, still, in the special case of a parish apprentice, he may be bound without such execution: but then the binding takes effect by the authority of an act of parliament. This, however, is not the case of a parish apprentice; and unless we were to hold, that it is competent for a father to bind his son apprentice without his assent (for which no authority can be produced), we must hold this indenture to be invalid. The case of *Rex* v. *Houghton-le-Spring* is very different. That was a case of hiring and service, the statutes applicable to which say nothing of the mode in which the contract of hiring is to be made; and there it was held that the deed executed by the servant, and his employment under it, were evidence to shew the terms under which the hiring had been made. And I think that that decision was right. This case, however, stands upon very different grounds. I am, therefore, of opinion that the sessions formed a right judgment. — *Bayley* J. I am of the same opinion. An infant can only bind himself apprentice by deed; and the question in this case is, whether, according to the words of the act, this party is bound by indenture. The indenture, indeed, purports to bind the son, but the son has not executed it. It is said, however, that he has done that which is tantamount to an execution. If we were to hold that to be so, we should hold, contrary to all principle, that an infant might be bound by his act *in pais*, without executing the deed. In the case of a parish apprentice there is a special power given by the statute of *Elizabeth* to parish officers, and there an apprentice may be bound without his assent till he come of age. But a father has, at the common law, no such right. The passage cited from *Comyn's Digest* is unsupported by any authority. I think, therefore, that the indenture in the present case was invalid, and that no settlement was gained by the service under it. — *Holroyd* J. The apprentice did not gain a settlement by the service in this case; for an infant cannot be bound merely by an act *in pais*. It has been argued, that as he has taken the benefit of the deed by serving under it, he must be bound by it. But that argument is not, as it seems to me, available. In *Rex* v. *Cromford* the apprentice had served out his time, and in *Rex* v. *Ripon*, (*ante*, p. 462.,) the indenture was executed by the father of the apprentice and the master, with her consent, and she also served under it. Yet in both those cases the indentures were held to be invalid. According to my recollection the distinction is this: where a party takes the benefit of a deed, but does not execute it, he will not be

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the apprentice himself: Held, that it was invalid, and that no settlement could be gained under it.

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liable under it, as for a covenant broken, but he may be liable under the implied contract raised by the acts of benefit which he takes under it. Here the infant was not bound by indenture, and no settlement was gained. — *Best* J. It seems to me that nothing has been said to shew that the infant was bound by this indenture. There is no sufficient authority for saying that a father, at the common law, can bind his infant son apprentice without his assent testified by the execution of the indenture. It is said, that the service here was tantamount to an execution: but where is that argument to stop? It might go the length of proving that a service for a single day, and that perhaps without proof of his knowledge of the contents of the indenture, would bind the apprentice. The dictum to which we have been referred applies only to land *qui sentit commodum sentire debet et onus, et transit terra cum onere;* and even there it would be a difficult point to establish, that where a person took possession of the land for a single day, he was bound by all the covenants of a long lease which he had never executed. It seems impossible to consider this as the case of a person bound by indenture; and unless that he be so, he is not within the statute, and has gained no settlement. Order of sessions confirmed.

See *Rex* v. *Badby*, 1 *Bott*, 549, where the point seems to have been taken for granted. And in *Rex* v. *St. Peter's on the Hill*, 2 *Bott*, 367., an indenture not executed by the master was held sufficient. In *Rex* v. *St. Nicholas, Nottingham*, 2 *T. R.* 726. although it was the case of a parish apprentice, yet the master, who had not executed the indenture, resided in another parish. In *Rex* v. *Ripon*, (*ante*, p. 462) the binding was of an adult, and not of an infant.

§ IX. (3.) Of the Execution of the Deed of Apprenticeship.

If the apprentice be bound, the indenture is good, though the master do not execute it.

Rex v. *St. Peter's on the Hill*, *H.* 14 *Geo.* 2. 2 *Bott*, 367. 1 *Nol. P. L.* 498, 499. The pauper was bound an apprentice in *St. Peter's* in *Chester*, to a carpenter for seven years; but the indentures were not executed by his master.— *Lee* C. J. It is objected, that this indenture is not good because not executed by the master; but that makes no difference, if the apprentice himself were bound.

§ IX. (4.) Of the Time.

Binding for less than seven years does not render an indenture void, but only voidable by the parties.

St. Nicholas v. *St. Peter's*, both in *Ipswich*, *M.* 10 *Geo.* 2. *Burr. S. C.* 91. 2 *Bott*, 363. 1 *Nol. P. L.* 500. There was an *indenture* of apprenticeship *for four years;* which the apprentice served accordingly; whereas the stat. 5 *Eliz. c.* 4. requires that it shall not be for less than seven years. And the question was, whether this should gain a settlement? It was urged that it could not; for that the said statute of the 5 *Eliz.* enacts, that all indentures otherwise than by that statute shall be clearly void in the law to all intents and purposes; and it is appointed by the same statute, that persons dwelling in cities and towns corporate shall take apprentices for seven years at the least; whereas this master, dwelling in a town corporate, hath taken this apprentice

only for four years. — By Ld. *Hardwicke* C. J. and the Court: The indenture is not void, but only voidable at the election of the parties themselves, if they think fit to take advantage of it; and not by a third person. It can only be avoided by the master or servant, who were the parties to it; but not by the parish who have had the benefit of the service of this apprentice.

Rex v. *St. Petrox*, *T.* 19 *Geo.* 2. *Burr. S. C.* 248. 2 *Bott*, 368. 1 *Nol. P. L.* 501. The pauper was bound a parish apprentice in *St. Petrox*, *until her age of twenty-one*, *without* the alternative, *or till time of marriage*, as the statute requires. It was urged that by this binding and service she gained no settlement, the binding being contrary to the statute and therefore void. But by the Court: The above case of *St. Nicholas* v. *St. Peter's* is in point. The indenture is not void, but only voidable by the parties themselves, if they shall think fit to take advantage thereof; but it is neither void nor voidable by the parish as to gaining a settlement.

A binding of a female parish apprentice till twenty-one does not render the binding void.

Rex v. *Evered*, *T.* 17 *Geo.* 3. *Cald.* 26. 1 *Bott*, 534. 1 *Nol. P. L.* 500. *S. C.* cited *per* Ld. *Ellenborough* C. J. *Gray* v. *Cookson*, 16 *East*, 27. In this case it appeared that the apprentice had been bound, when an infant, for six years, by indenture; and that afterwards when of age he had run away; and it was held that such a binding was not void, but merely voidable. *Vide* Vol. I. p. 124.

So a binding for six years.

The same point was determined in the case of a parish apprentice, in *Rex* v. *Chalbury*, *E.* 9 *Geo.* 2. 1 *Bott*, 600. 1 *Nol. P. L.* 501.

In *Rex* v. *Woolstanton*, 1 *Bott*, 606. 1 *Nol. P. L.* 500, 501. it was decided that an *unlimited* binding of a parish apprentice was not *void*, but only voidable. And that the statute for putting out parish-boys apprentice, as to that part which speaks of binding them till the age of twenty-four, is only directory; but that if it were compulsory, the indenture would be, for want of this, only voidable. Upon this subject, see also *tit.* Apprentices, Vol. I. § IV.

Binding for an unlimited time.

§ IX. 5. Of binding Parish Apprentices, and Allowances by the Justices.

In *Rex* v. *Fleet*, *T.* 17 *Geo.* 3. 2 *Bott*, 371. 1 *Nol. P. L.* 500. It was ruled that the indentures of a parish apprentice are valid though not executed by the master.

Rex v. *St. Nicholas* in *Nottingham*, *M.* 29 *Geo.* 3. 2 *T. R.* 726. 2 *Bott*, 373. 1 *Nol. P. L.* 500. Where the pauper was bound out as a parish apprentice, and the deed was regularly executed by all but the pauper, who did not sign it, though he lived under the indenture five months, it was held that the indenture was binding notwithstanding that defect. And in both these cases great stress was laid upon the master's having received the apprentice, and the latter having served under the indenture, as evidence that the pauper had assented to his apprenticeship.

And a parish apprentice's indenture is not void for want of signing by the apprentice.

So also in *Rex* v. *Woolstanton*, *H.* 12 *Geo.* 2. 1 *Bott*, 606. 1 *Nol. P. L.* 500. It was held that the signing of an apprenticeship indenture by a boy bound out by the parish was not necessary.

N. B. In this case the apprentice was bound out against his own consent.

Where one of the two overseers was also sole churchwarden, and the indenture was executed by the overseers, the binding was held insufficient, as by the statute there ought to be two overseers exclusive of churchwardens, *Rex* v. *All Saints, Derby*, 13 *East*, 143. *ante*, page 9.; but this is now remedied by stat. 51 *Geo.* 3. *c.*80. *ante*, page 456. which has a retrospective operation.

Indenture signed by one churchwarden and one overseer.

Where an indenture appeared to be made by *A. B.* churchwarden, and *C. D.* overseer of the hamlet of ———, and no other evidence was given respecting it, it was holden by the sessions to be sufficient; but the court of K. B. held that there might be one churchwarden only by custom, and that if any intendment could by law be made to support the indenture they must make that intendment. *Rex* v. *Hinckley*, 12 *East*, 361.

Upon which Mr. *Evans* observes, "I have never been able to assent to the correctness of this decision, because the presumption is always to be made according to the general course and operation of the law; and if the appointment of one churchwarden would be, *primâ facie*, void, the existence of a special custom to support it would seem to require positive proof. 8 *Ev. Col. Stat.* 690. *n.* (23.)

Since the 13 & 14 Car. 2. c.12. an indenture of apprenticeship executed by the overseer of a township which has no churchwardens or chapelwardens and maintains its own poor separately, is a valid indenture; although neither of the churchwardens of the parish at large within which the township is situate, join in the execution.

Rex v. *Nantwich*, *M.* 53 *Geo.* 3. 16 *East*, 228. *Bott, Cont.* 15. 1 *Nol. P. L.* 505. Removal from *Pendleton* to the township of *Nantwich*. Order confirmed, subject, &c.—Case:—The parish of *Nantwich* consists of five townships, of which the township of *Nantwich* is one. These townships act separately in all matters relative to the management of the poor, and separate overseers are regularly appointed, two for each township. Two churchwardens are appointed for the parish at large, who have not been accustomed to interfere at all in the management of the poor in any of the townships. There are no churchwardens or chapelwardens appointed in any of the townships. In the year 1787, the pauper, then being a poor boy, and settled in the township of *Nantwich*, was put out for seven years as an apprentice to *W.* and *T. D.*, cotton machine workers, by an indenture duly stamped and executed by the overseers of the township of *Nantwich*, and duly allowed by two magistrates, *but not executed by either of the churchwardens.* Under this indenture the pauper served Messrs. *D.* for seven years at *Pendleton*, and resided there during the whole time. The question for the Court was, whether, under the circumstances of the case, it was necessary that the churchwardens of the parish, or one of them, should have executed this indenture to make it valid. The arguments were upon the construction to be given to stat. 43 *Eliz. c.*2. stat. 13 & 14 *Car.* 2. *c.*12. stat. 8 & 9 *W.* 3. *c.*30. and stat. 17 *Geo.* 2. *c.*38. § 15. and the cases of *Rex* v. *Clifton*, 2 *East*, 168. and *Spitalfields* v. *Bromley*, 2 *Bott*, 684. were cited. The Court delivered their opinions at great length, and entered very fully into the meaning of these several acts of parliament, as connected with each other; and ultimately came to the conclusion, that by the operation of the stat. 13 & 14 *Car.* 2. *c.* 12. an indenture of apprenticeship executed by the overseers of a township which has no churchwardens or chapelwardens, and maintains its own poor separately, is a valid indenture, though neither of the churchwardens of the parish at large, within which the township is situated, join in the execution; and that this oper-

ation of the stat. 13 & 14 *Car.* 2. *c.* 12. is not affected by any of the subsequent statutes. R. v. Nantwich.

Stat. 43 *Eliz.* *c.* 2. does not require absolutely two churchwardens in every parish for the management of the poor; and therefore an indenture binding out a poor apprentice, by *one* churchwarden (where by custom there was but one) and *one* overseer, was held to be good within the fifth section of that stat. which requires it to be executed by the *greater* part of the churchwardens and overseers; *Rex* v. *Inhabitants of Earl Shilton*, 1 *B.* & *A.* 275. See Vol. I. page 143, 144. and stat. 1 & 2 *Geo.* 4. *c.* 32. *ante*, p. 458.

Indenture reciting certain trustees to be parties and the consideration to be 20l. held good, though not executed by the trustees, and though the whole of the consideration was not paid to the master.

Rex v. *Quainton*, *H.* 54 *Geo.* 3. 2 *M.* & *S.* 338. *Bott*, *Cont.* 16. 1 *Nol. P. L.* 497. Removal from *Quainton* to *Bicester-Market-End*, quashed, subject, &c. The pauper on the 23d of *November*, 1811, being then a poor boy, aged thirteen, of the parish of *Quainton*, was, with the consent and approbation of the trustees (created by the will of Lady *Say and Sele*, for the purpose of yearly putting out a certain number of poor boys apprentices,) bound apprentice to *J. Adams* of *Bicester*, for seven years, for the consideration of 20*l.*, stated in the indenture to be paid to *Adams* by the said trustees, who were also recited to be parties to the said indenture; but it was only executed by the pauper and *Adams*. This indenture was unstamped, and it appeared that *Adams* had actually received only 16*l.* 15*s.* 6*d.*, the residue of the 20*l.* being retained by the agent of the trustees for the costs and expences of the binding. The pauper served under the indenture at *Bicester* more than forty days. The question for the opinion of the Court was, whether the indenture was void on account of the trustees not having joined in the execution; or on account of the consideration-money being untruly stated therein; on which latter ground the justices at sessions decided in the affirmative. — Ld. *Ellenborough* C. J. said, Upon the latter point, it appeared that the money was paid out of the funds of the public charity, and that it was paid by the trustees in the execution of their trust; and that they acted very wisely not to involve themselves by becoming parties to the covenant. And as to the other point, that the consideration was fully stated. Even if a stamp had been necessary, the consideration would have been sufficiently stated, for it is stated against the party's interest. (See *Rex* v. *Keynsham*, 5 *East*, 309.) Order of sessions quashed.

As to *voluntary apprentices*, see *Rex* v. *Cromford*, *ante*, p. 464.

As to the requisite number of parish officers in executing the indenture, See Vol. I. *tit.* Apprentices, § IV. *et vide ante*, pages 456 & 458.

The justices must sign, and no other mode of allowance is good. The justices who allow a parish binding, must do it in the presence of each other.

By *Rex* v. *John Saltern*, *E.* 24 *Geo.* 3. 1 *Bott*, 613. 1 *Nol. P. L.* 507. the justices must by their signing testify their assent.

Rex v. *Hamstall Ridware*, *T.* 29 *Geo.* 3. 3 *T. R.* 380. 1 *Bott*, 620. 1 *Nol. P. L.* 507. The pauper was bound by indenture by the parish officers as a parish apprentice. The indenture was *separately* assented to by two justices, by signing the same; but the two justices *did not assent to or sign the same at the same time*, or in the presence of each other. It was contended that this was a *ministerial act*, and that therefore it was no more necessary under stat. 43 *El.* *c.* 2. § 5. for the two justices to assent together, than it was for them to do so in the case of a rate according to

R. v. Hamstall Ridware.

§ 1. of the same act.—But Ld. *Kenyon* C. J. held clearly that *this was* an act of a *judicial* nature, and as such that the justices must, when they do it, meet and confer together. The other judges agreed.

But one may sign alone, and afterwards be present at the signing by the other.

Rex v. *Winwick*, *H.* 40 *Geo.* 3. 8 *T.R.* 455. 1 *Bott*, 625. 1 *Nol. P. L.* 507. In this case the pauper was settled by birth at *Winwick;* the counsel for which parish offered in evidence an instrument purporting to be an indenture dated 18th *December*, 1789, whereby the pauper was bound an apprentice by the parish officers of *W.* to one *T. H.* of *Spratton*. The instrument was signed by the Rev. Dr. *Freeman*, one of the justices, at the parish where he resided, but the other justice, the Rev. Dr. *Preedy*, was not then present; a few days afterwards, the Rev. Dr. *Freeman* went to the house of Dr. *Preedy*, where the same was signed in the presence of all the parties.—Ld. *Kenyon* C. J. This case is clearly distinguishable from that of *Rex* v. *Hamstall Ridware*, because though one of the magistrates first put his signature to this indenture at a time when the other was not present, both the magistrates afterwards met on the subject, and agreed to the propriety of the measure when the other magistrate also executed the instrument. The principle on which this case is determined was recognized some years ago in a case of murder: a magistrate who kept by him a number of blank warrants ready signed, on being applied to, filled up one of those, and signed and delivered it to the officer, who on endeavouring to arrest the party, was killed: the judges were of opinion that this was murder in the person killing the officer, and he was accordingly executed. And this was not on a new principle then for the first time established: it had always been uniformly acted upon. *Per* Ld. *Kenyon*, C. J. *S. C.*

The justices refusing their assent to the binding a parish apprentice, he was bound with his own and his mother's consent with the parish money; the binding was found fraudulent by the quarter sessions. Held to be a binding independent of the statute, and a settlement gained.

Rex v. *Kilby*, *E.* 54 *Geo.* 3. 2 *M.* & *S.* 501. 1 *Nol. P.L.* 502. 508. Removal from *Kilby* to *Great Wigston;* discharged subject, &c. The pauper was born at *Kilby*. His father died when the pauper was four or five years old, and the parish relieved the widow with two shillings *per* week till he was nine years old; at which time the parish officers wished to put the pauper out apprentice, but the widow objected on account of his age. In consequence of her objecting the parish officers took off the two shillings *per* week, and refused to give her any more relief. When the pauper was about eleven years old, the widow being no longer able to support him, and his younger brother, and the parish refusing to relieve her until the pauper was put apprentice, went to the parish officer and told him she would consent that her son should be put apprentice. He bid her choose a master, and she chose one *Dand* of *Great Wigston*, to whom the parish officer agreed to give three guineas in money, and other things to the amount in the whole of 4*l*. The parish officer, the pauper, his mother and *Dand* met together, proposing to have the boy bound before the justices, and went before them for that purpose; but the justices finding upon examination that *Dand* had as many apprentices as they thought he could do justice to, would not let him have any more. The parish officer then declared if he could not have him bound there, he would have him bound in another place, and accordingly took all the parties to an inn, procured an indenture stamp, which was regularly filled up and executed, and the pauper, with the consent of his mother, bound himself to *Dand* for seven years. The premium three guineas

and the other things making up the 4*l.* were to be delivered to Dand at the expiration of six weeks from the execution of the indenture, at which time *Dand* went to *Kilby*, and received them of the parish officer. The duty paid was 1*s.* 6*d.* being 6*d.* in the pound upon the 3*l.*, and all expences of binding were paid by the parish. The pauper served *Dand* in *Great Wigston* a sufficient length of time to gain a settlement if the binding were good. The sessions founded their judgment on the ground of fraud upon the above facts. After argument Ld. *Ellenborough* C. J. said, this does not appear to have been intended to be a binding as a parish apprentice; if it did, it might be defective. But it is independently of the statute a binding with the consent of the mother, the son, and the master. The justices have indeed found fraud, but there are no circumstances to warrant such a conclusion, except that when the parties could not obtain the binding before the justices, they went elsewhere, and perfected it in another way. It is said this was the parish money, and perhaps there has been a misapplication of it; but still there has been a valid binding, for the pauper with his mother's consent binds himself. If the mother had been a party to the indenture, and the action had been brought against her upon it, I do not see how she could have effectually pleaded *per fraudem*, or *per minas*. — *Le Blanc* J. It appears that the mother chose the master, and it is not stated that the child was of an age not fit to be bound apprentice. — *Bayley* J. After the allowance was withdrawn, the mother might have obtained relief by application to the justices, if she had been entitled to it. Order of sessions quashed. [See stat. 56 *Geo.* 3. *c.* 139. § 11. Vol. I. p.141.]

R. v. Kilby.

Rex v. *Arundel*, *T.* 56 *Geo.* 3. 5 *M.* & *S.* 257. 1 *Nol. P. L.* 499. 502. 508. Upon appeal, the quarter sessions for the county of *Sussex* quashed an order for the removal of *George Slater* from *Arundel* to *Ferring* subject to the opinion of the court of K. B. upon the following case: The pauper was bound apprentice to one *Barber*, by indenture, in the usual form, (*a*), having a thirty-shilling stamp, and regularly executed by *Barber* and the pauper, but not signed by any of the parish officers of *Arundel*, or assented to by any of the justices; and the question was, whether the signature of the parish officers, and the assent of the justices, were necessary to the validity of this indenture, under the following circumstances: The pauper was a cripple, settled in *Arundel*, and his mother, in the first instance, applied to *Barber*, and expressed a wish that her son might be placed with him as an apprentice. The pauper, at the time when the indenture was executed, was eighteen years of age, and had been for about a year before and was then in the *Arundel* workhouse, from whence he went to the attorney's office, where the indenture was executed, and met there his father and the parish officer; and it was agreed between *Barber* and the parish officer, that the pauper should go into the service of *Barber*, and that the parish should pay the

An infant may bind himself apprentice by indenture, because it is for his benefit; and though he be a pauper in the parish workhouse at the time of the binding, and the parish officers pay the premium, yet it is not necessary that they should sign the indenture, or that the justices should assent thereto, if the apprentice be not a parish apprentice within the

(*a*) The indenture began, "This indenture witnesseth, that *G. Slater*, of *Arundel*, in the county of *Sussex*, aged nearly eighteen years, of his own free will doth put himself apprentice to *C. Barber*, of *Patching*, cordwainer, &c. for four years, &c.; and the said *C. Barber*, in consideration of the sum of 40*l.* to him in hand paid, &c."

R. v. Arundel.

meaning of stat. 43 Eliz. c. 2.

sum of 40*l.*, which was paid accordingly out of the fund belonging to *Arundel.* The pauper's father was present when the indenture was executed, and it was read over at the time. The pauper stated at the sessions that he had not been previously consulted, and that it was not with his good will that he went into the service, but that he never expressed to any one any objection to being bound. *Barber*, at the time of the execution of the indenture, lived at *Patching*, and continued there a year and a half afterwards, and then removed to *Ferring*, accompanied by the pauper, who continued in that parish with his master, under the indenture, for nearly a year. The sessions considered the pauper as having been put out by the parish, and that, under these circumstances, the indenture was void. After argument, Ld. *Ellenborough* C. J. said, This indenture must be considered clearly as for the infant's benefit, and not having been vacated, it must be considered as binding, so as to confer a settlement, on him by reason of his service under it. This was not the binding of a parish apprentice, it was to a person not residing in the parish; and all that the parish officers did was the advancing of 40*l.* as the premium. As to any supposed controlling influence of the parish officers, I do not see how we can enter upon that subject, nothing being stated concerning it in the case. The influence, however, seems to have been that of the mother; the parish officers make the advance, and the pauper executes the indenture. I think the binding was undoubtedly for his benefit, and therefore valid. — *Bayley* J. The pauper executed the deed without objection, and there was not any compulsion used at that time. Order of sessions quashed.

An indenture stated that the overseers and churchwardens of *M.* in the county of *W.* with the consent of justices of the *said* county, bound a pauper apprentice to *T. W.*, of *H.*, in the county of *L.* and the justices in their written consent in the margin described themselves as justices of the county *aforesaid:* Held that it sufficiently appeared that they were justices of the county of *W.*

Rex v. *Hinckley*, *H.* 58 *Geo.* 3. 1 *B.* & *A.* 273. 1 *Nol. P.L.* 503. Removal from the liberties of *Monks Kirby*, in the county of *Warwick*, (which liberties have overseers appointed, and maintain their own poor separately from the other parts of the parish,) to the parish of *Hinckley*, in the county of *Leicester*. The sessions, on appeal, confirmed this order, subject to the opinion of the Court of K. B. on the following case: — The pauper was bound apprentice by the churchwardens and overseers of the liberties of *Monks Kirby*, to *John Wright* of *Hinckley*, by a parish indenture, of the third of *August*, 1795, which stated that *J. B.*, and *E. B.*, churchwardens of the liberties of *Monks Kirby*, in the county of *Warwick*, and *S. C.*, and *J. T.*, overseers of the poor of the said liberties, *by and with the consent of the justices of the peace for the said county*, whose names were thereto subscribed, had placed *William Sansom*, aged eight years or thereabouts, a poor child of the said liberties, apprentice to *John Wright*, of the parish of *Hinckley*, in the county of *Leicester*, frame-work-knitter, with him to dwell and serve from thence until the apprentice should accomplish his full age of twenty-one years, according to the statute in that case made and provided. The indenture was duly executed by all the parties thereto, and in the margin the magistrates stated their consent, but described themselves as justices *for the county aforesaid*. The pauper served his master under this indenture in the parish of *Hinckley*, from the date of the indenture until its expiration, and during the whole of that period slept in that parish. The magistrates who signed the allowance of the indenture were magistrates for the county of *Warwick*, and also for the county of *Leicester*. — After argument,

Ld. *Ellenborough* C. J. said, it is quite clear that the words "county aforesaid," can only refer to the county of *Warwick*. The justices, we must presume, read the indenture before they allowed it; and indeed their very words of reference prove that it must have been so; then if they did read it, they must have known that they had no authority to act, except as justices of the county of *Warwick*. The question after all really is, whether *said* county and county *aforesaid* mean the same thing. If they do, it is evident from the body of the instrument that the words "said county" can only apply to the county of *Warwick*. It will follow, that the words "county aforesaid" must have the same application. Order of sessions confirmed. **R. v. Hinckley.**

Where the indenture of apprenticeship had been signed only by one overseer, held, that before parol evidence of there having been only one appointed in that year could be allowed, all the means of procuring the written appointment must be shown to have been had recourse to; a notice to the appellants, to produce all books, papers, &c. is not sufficient, the officers themselves must also be subpœnaed.

Rex v. *Stoke Golding, M.* 58 *Geo.* 3. 1 *B. & A.* 173. *Phill. Ev.* 435. *6th edit.* On the hearing of an appeal against an order of removal, the principal question was, whether one person only, or more than one, had been appointed overseer in a particular year; the respondents, who, in order to vacate an indenture of apprenticeship, had to prove that only one overseer had been appointed in that year, had given notice to the appellants to produce all books and writings in their custody and power, relating to the appointments of overseers; the appellants being called upon to produce under this notice, produced one parish book, which was the only one in existence, and the parish officer who produced it, proved that no appointments were kept by the parish: the respondents then proceeded to enquire of a witness, as to there having been, in the particular year, one or more overseers; but, on an objection being taken, the Court of quarter sessions held, and the Court of K. B. afterwards confirmed their opinion, that, as the appointments had been in writing, parol evidence could not be admitted. "The question," said Ld. *Ellenborough*, "is whether the justices below have done wrong in rejecting the parol evidence. This is clear, that the parol evidence could not be admitted, until the case was ripe for the admission of secondary evidence; now it could not be considered as ripe for that purpose, until the respondent parish had exhausted all the proper means of procuring the primary evidence. Have they done this? First, as to the appointment itself, they gave a notice to the parish; and, supposing the parish had the actual custody, that notice would have been sufficient, but this does not appear. Have they then the legal custody? Certainly not, for the legal custody is in the officer who is the person most interested in the instrument, and who requires its production as a sanction for those acts, which he may be called upon to do under its authority. Now, here there has not been any notice to the overseer himself. I think, therefore," added Ld. *Ellenborough*, "that, as in this case there has been omission of the means of exhausting the primary evidence, recourse could not be had to that of a secondary nature."

The statute 56 G. 3. c. 139. § 1. requiring that the order of justices for the binding out of parish apprentices shall be referred to in

Rex v. *Inhab. of Bawbergh, T.* 4 *Geo.* 4. 2 *B. & C.* 222. 1 *Nol. P. L.* 512. Upon an appeal against an order of justices for the removal of *W. Pease* from the parish of *St. Andrew*, in the city of *Norwich*, to the parish of *Bawbergh*, in the county of *Norfolk*, the sessions confirmed the order, subject to the opinion of this Court, on the following case: *W. Pease* was an illegitimate child, born in *Great Melton*, in *Norfolk*: and by an order of two justices, bearing date the 11th day of *May*, 1819, and made under the provisions

R. v. Bawberg.

the indenture by the date thereof, is compulsory; and therefore an indenture, in which the date of the order is omitted, is void, and no settlement is gained by serving under it.

of stat. 56 *Geo.* 3. *c.* 139., and an indenture, not stamped, was bound an apprentice. The order of justices was set out at length; and the indenture of apprenticeship stated, that the churchwardens and overseers, by and with the consent of two justices for the county of *Norfolk*, whose names were thereunto subscribed, bound *W. Pease*, a poor child, as an apprentice, for the term of seven years, &c.; but the indenture did not mention the date of the order of justices, nor did it appear whether they signed the indenture before or after the other parties. The parish officers of *Melton* paid the master the sum of 10*l.*, (which was the premium stipulated to be paid by the indenture) and the pauper entered upon his apprenticeship, and served his master at *Bawbergh* for about a year and a half; when, on his master's failure, he left him and came to *Norwich*.—*Bayley* J. I am of opinion that this indenture is void, and consequently that no settlement was gained in the parish of *Bawbergh*. The statute of the 56 *Geo.* 3. *c.* 139. has introduced a variety of new regulations as to the mode of binding out parish apprentices. It requires that the child shall be carried before two justices, and they are to enquire into the propriety of binding such child apprentice to the person to whom it shall be proposed by the overseers to bind him; and if the justices shall, upon the enquiry, think it proper that the child shall be bound apprentice to such person, the statute then enacts that the justices shall make an order, declaring that such person is a fit person to whom the child may be bound as apprentice, and shall thereupon order that the overseer of the place to which the child shall belong shall be at liberty to bind such child apprentice accordingly; which order shall be delivered to such overseer as the warrant for binding such child as aforesaid, and such order shall be referred to by the date thereof and the names of the said justices, in the indenture of apprenticeship of such child; and after such order shall have been made, such justices shall sign their allowance of such indenture of apprenticeship before the same shall be executed by any of the other parties thereto." The statute requires specifically that the order should be referred to by the date; and the object of that might be, that the order might be found with facility at any future period. The statute then requires that the justices shall sign the allowance of such indenture. Now, the word "such" is not immaterial; and the reference to the order by date is either directory only, or it is of the essence of the indenture. I am of opinion that it means such an indenture as was before required, viz. one containing the date of the order of justices. The fifth section then enacts, that no settlement shall be gained by any child who shall be bound by the officers of any parish, &c., by reason of such apprenticeship, unless such order shall be made, and such allowance of such indenture shall be signed as thereinbefore directed. There must, therefore, be an allowance, not of such indenture, but of such indenture as was thereinbefore directed, viz. of one referring to the order of justices by the date thereof. I doubt whether the eleventh section applies to such a case as the present, or whether it applies only to such cases where the binding is by the parents, and not by the overseers; but I am clearly of opinion that, construing the first and fifth sections together, this indenture is void, and that no settlement was gained in the parish of *Bawbergh* by the service under it.—*Best* J. The

first and fifth sections are to be taken together, and then there can be no doubt that a settlement was not gained in the parish of *Bawbergh*, because in the indenture the order of the justices was not referred to by the date. Such indenture means the indenture before spoken of. — Order of sessions quashed. R. v. Bawberg.

Rex v. *Inhab. of Newark upon Trent*, *T.* 1824. 3 *B.* & *C.* 59. A pauper settled in the parish of *N. C.* in the county of *N.*, was, pursuant to an order of two justices of the *county*, bound apprentice by the churchwardens and overseers of that parish, to *A. B.* of another parish, in a *borough* situate in the same county, but having *justices who had an exclusive jurisdiction therein.* The indenture was allowed by the two county justices, *but no notice was given to the overseers of the poor of the parish in the borough, of the intention to bind such apprentice;* nor did they or any of them attend before the county justices who allowed the indenture, and admit such notice. — Held by *Bayley*, *Holroyd*, and *Littledale*, Js., *Abbott* C. J. *dissentiente*, that by stat. 56 *Geo.* 3. *c.* 139. the indenture was void for want of such notice, and that the pauper did not gain any settlement by serving under it. (See Addenda to Vol. I. *tit.* Apprentice.)

§ IX. (6.) Of the Stamp.

Two kinds of stamps, one in respect of the instrument as such, the other in respect of the fee, are no longer required to indentures of apprenticeship. The stamp-duty here is wholly regulated by stat. 55 *Geo.* 3. *c.* 184. for which see *ante*, p. 460, 461. The indenture must be stamped.

Rex v. *Llanvair Dyffryn Clwyd*, *T.* 17 & 18 *Geo.* 2. *Burr*, *S. C.* 236. 1 *Bott*, 549. 1 *Nol. P. L.* 457, 458. 3*d edit. John Edwards*, an infant, was by his father bound apprentice by indenture, but the indenture was not stamped. And it was ruled, that the indenture, not being on stamped parchment or paper, could not be given in evidence at all, being absolutely void to all intents and purposes.

Rex v. *Holbeck* in *Leeds*, *M.* 16 *Geo.* 2. *Burr. S. C.* 198 2 *Bott*, 449. 1 *Nol. P. L.* 530. 3*d edit. Peter Orange*, the pauper, was bound a parish apprentice by indenture; but the indenture being produced it appeared not to be stamped. It was objected, that by stat. 5 & 6 *W.* & *M.* *c.* 21. § 11. which lays a duty of 6*d.* upon the indenture of a parish apprentice, it is enacted, that such indenture shall not be given in evidence, nor be available in any court, till the duty and also a penalty of 5*l.* be paid, and the parchment or paper stamped. And by the Court: this indenture was necessary evidence to make out the proof of a binding by indenture; for that binding could be no otherwise proved but by the indenture, and the indenture being unstamped could not be admitted as evidence, and the justices ought to have paid no regard to it.

Rex v. *Ditchingham*, *T.* 32 *Geo.* 3. 4 *T. R.* 769. 2 *Bott*, 377. 1 *Nol. P. L.* 450. 461. 3*d edit.* Also, it was held that no settlement was gained by serving under an agreement of apprenticeship not stamped. The Court thought the point too clear to be discussed. They said, that though a modern act of parliament (31 *Geo.* 2. *c.* 11.) had dispensed with the necessity of having the deed of apprenticeship indented, it was still necessary that the binding should be by deed. And that the service as an apprentice could not be converted into a service as an hired servant.

As to the *presumption* that the indenture has been stamped, see *Rex* v. *East Knoyle, post*.

The stamp must be of the proper kind, as well as value.

Robinson v. *Dryborough, T.* 35 *Geo.* 3. 6 *T. R.* 317. 1 *Nol. P.L.* 457. 3*d edit.* In this case it was decided that it was not sufficient for a deed to be stamped with a stamp of the required *value*, but that the stamp must also be of the proper *kind*, viz. a deed stamp.

Even though stamp used be higher than that required, and applicable to same kind of instrument;

And in *Farr* v. *Price, M.* 41 *Geo.* 3. 1 *East*, 55. 1 *Nol. P.L.* 457. 3*d edit.* which was the case of a promissory note, it was held, that even though the stamp were of a *higher* value than was requisite, still the instrument so stamped was void; and this was a case where both the stamp actually used, and that prescribed by the act, were applicable to the same kind of instrument.

but if applicable to the proper funds, then, though higher than required, the instrument will be valid.

In *Taylor* v. *Hague, T.* 42 *Geo.* 3. 2 *East*, 414. 1 *Nol. P.L.* 458. 3*d ed.* A promissory note was written upon a 2*s.* promissory note stamp, instead of one of 1*s.* 6*d.* which was the proper stamp at the time. It appeared that more than sufficient of the 2*s.* stamp used was applicable to the respective funds to which the proper 1*s.* 6*d.* stamp was appropriated. And it was held that the instrument was therefore valid.

An indenture of apprenticeship, executed before the passing of stat. 44 G. 3. c. 98. must be stamped with the premium stamp within the time prescribed by stat. 8 An. c. 9.; and where such an indenture was stamped at the time of its being produced in evidence, with the stamp required by stat. 55 G. 3. c. 184. but not within the time prescribed by stat. Anne: Held, that the indenture was wholly void, and that the pauper, by serving under it, gained no settlement.

Rex v. *Inh. of Chipping Norton, H.* 2 *Geo.* 4. 5 *B. & A.* 412. Removal of *Jane Eely*, widow, and her six children, from the parish of *Aynho*, in the county of *Northampton*, to the parish of *Chipping Norton*, in the county of *Oxford*; the sessions confirmed the order, subject, &c. Case: — By indenture of the 30th *October*, 1794, *William Eely*, the late husband of the pauper, *Jane Eely*, and the father of her children, not being then settled in the parish of *Chipping Norton*, bound himself to serve *R. Phillips* of *Chipping Norton*, as an apprentice for seven years, and *R. Phillips*, in consideration of 25*l.*, the sum given with the apprentice, covenanted to instruct him in the business of a cooper. The indenture was duly stamped, with a stamp denoting the payment of the several duties, amounting in the whole to 6*s.*, imposed by different statutes upon the indenture itself; but it was not stamped with any stamp in respect of the premium, as required by stat. 8 *Anne, c.* 9., within the time required by that statute, nor until the making of the order of removal, and after the entering of the appeal against the order. Before the hearing of the appeal, the indenture was stamped, upon the payment of 5*l.* penalty, and of 1*l.*, with a stamp denoting payment of a duty of 1*l.*, being the *ad valorem* duty stamp used to denote the payment of such duty under stat. 55 *Geo.* 3. *c.* 184., and 1*l.* being the duty payable under that statute, in respect of a premium of 25*l.* given with an apprentice. The duty payable in respect of the like premium under stat. 8 *Anne, c.* 9., was 12*s.* 6*d.* only, the duties payable under both the last mentioned statutes, were, after they were paid into the exchequer, applicable to the same purposes. The stamps used by the commissioners, under stat. 55 *Geo.* 3. *c.* 184., are of a different sort from those which were required to be procured and used by stat. 8 *Anne, c.* 9., which were poundage stamps. These stamps were used until the passing of stat. 44 *Geo.* 3. *c.* 98., which imposed an *ad valorem* duty, and the poundage stamps were disused, and the dies with which they were formed were then broken up, and are not now in existence. *William Eely* served under the indenture in *Chipping Norton*, until the expiration of seven years from the date thereof. After hearing

counsel in support of the order of sessions, *Abbott* C. J. said, I am of opinion that this indenture was void, not having been stamped within the time required by law, and, consequently, that the pauper gained no settlement by serving under it. By stat. 8 *Ann. c.* 9. § 32. a premium stamp is imposed, and by § 36. indentures signed within the limits of the weekly bills of mortality, were required to be stamped within one month after the date, and by § 37. every indenture entered into elsewhere in *G. B.* shall be either stamped within two months, or brought within that time to some collector or officer appointed for the management of these duties, who shall indorse a receipt for the duty paid, bearing date on the day of payment. By § 38. indentures executed within 50 miles, to be computed from the limits of the weekly bills of mortality, shall be stamped within three months, and if at a greater distance, within six months after the date or making thereof. By § 39. all indentures not stamped within the respective times for that purpose limited by the act, are declared void, and not available in any court or place, or to any purpose whatsoever. Here, therefore, the legislature expressly requires that the instrument shall be stamped within the prescribed time, and declares that, in case of omission, it shall be void to all intents and purposes, and that forms a distinction between this case and those that have been cited in argument. (*a*) The order of sessions must, therefore, be quashed. Order of sessions quashed. **R. v. Inh. of Chipping Norton.**

§ IX. (7.) Of the Consideration and Duty thereon.

See ante, § IX. p 457.

By stat. 8 *Ann. c.* 9. § 39. All such indentures wherein shall not be truly inserted and written the full sum and sums of money received with or in relation to such clerk, apprentice, or servant as aforesaid, or whereupon the duties payable by this act shall not be duly paid, or lawfully tendered, or which shall not be stamped, or lawfully tendered to be stamped, according to the tenor and true meaning of this act, shall be void, and not available in any court or place, or to any purpose whatever. **8 Ann. c. 9.**

§ 40. Exempts parish and public charity apprentices from the said duties.

By § 45. Where any thing or things (*ante*, p. 458.) not being lawful money of *G. B.* shall directly or indirectly be given, assigned, conveyed, delivered, contracted for, or secured to or for the use or benefit of any master or mistress, with or in respect of any such clerk, apprentice, or servant, for whom a duty is chargeable by this act; the duties hereby granted shall be paid for the full value or values of such thing or things. [For the amount of duties now imposed on indentures of apprenticeship, see stat. 55 *Geo.* 3. *c.* 184. *ante*, page 460.]

Cuerden v. *Leyland*, *H.* 4 *Geo.* 2. 2 *Stra.* 903. 2 *Sess. Ca.* 134. 1 *Bott*, 545. 1 *Nol. P. L.* 461. 3*d edit.* On a special order of sessions it was stated, that the pauper was bound apprentice by indenture, and the master had 20*s.* paid him; that he served three years, but that the master never paid the duty of 6*d.* in the pound according to stat. 8 *Ann. c.* 9. § 39. which says, that if the duty be **If the duty be not paid, the indenture is void.**

(*a*) *Wright* v. *Riley*, *Peake's Rep.* 173. *Burton* v. *Kirkby*, 7 *Taunt.* 174. *Roderick* v. *Hovil*, 3 *Campb.* 103. *Edwards* v. *Dick*, 4 *B. & A.* 212.

not paid, the indenture shall be void to all intents and purposes whatsoever. The case was referred to *Fortescue* J. who went the circuit: And he held it a settlement, because the master had six months to pay the duty in; so that during those six months a settlement was gained, and it should not be in the power of the master to defeat it by matter *ex post facto*. And pursuant to this opinion, the sessions held it a settlement. But upon debate in the King's Bench, the order was quashed: for they said, it was making the indenture good to one purpose, when the act of parliament had made it void to all intents and purposes whatsoever. And though it was a hard case, they could not break through the positive words of the act.

No duty payable where the consideration is 6*d*.

Baxter v. *Faulam*, *E.* 19 *Geo.* 2. 1 *Wils.* 129. 1 *Bott*, 549. 1 *Nol. P. L.* 461. 3*d edit.* The single question upon a demurrer was, Whether an indenture of apprenticeship, where 6*d*. is mentioned to be the sum given with the apprentice, be or be not void for want of the duty being paid for the sum so given. By the Court: No duty was ever intended to be paid for so insignificant a sum, there being no coin in *England* small enough to pay it. And by the act no stamp is required for less than 20*s*.

Rex v. *Yarmouth*, *H.* 28 *Geo.* 2. *Burr. S.C.* 379. 1 *Nol. P.L.* 461. 3*d edit.* The pauper, *William Jackson*, was bound and served a seven years' apprenticeship in *St. Julian's, Norwich*. But it appeared that the apprenticeship was in consideration of 6*d*. given to the master with the said apprentice, and no duty was proved to be paid for the same. It was objected, that this indenture was void to all intents and purposes. But on shewing cause, the point was given up, on the authority of *Baxter* v. *Faulam*.

A public annual charitable subscription, is within the words "public charity" in the act.

Rex v. *St. Matthew's, Bethnal Green*, *H.* 7 *Geo.* 3. *Burr. S. C.* 574. 1 *Bott*, 641. 1 *Nol. P. L.* 467. 3*d edit.* The sum of 5*l.* was inserted in the indenture as given with the apprentice, and was paid to the master accordingly, and the indenture had no stamp denoting the duty of 6*d*. in the pound being paid by the master for the said sum. This sum was paid out of a voluntary annual subscription for putting out children apprentices brought up at the charity school of the parish of *St. John, Wapping;* and trustees are appointed annually for managing the said charity, and a treasurer. It was objected, that this being a private and not a permanent charity, and consequently not within the exception of the act of parliament as to *public* charities, the indenture, therefore, not being stamped, was void. But by Ld. *Mansfield* and the Court: It is a *public* charity, and a very laudable one. It is not necessary that it should be a permanent charity. The reason of the distinction between a public and private charity is obvious: a private charity might be calculated to evade the act, but a public one cannot be supposed to have been so. But upon payment of the duty and penalty, and a receipt thereof from the stamp office produced in evidence, the writing is made good. See 8 *Mod.* 365.

A person bound out for a consideration bequeathed for that purpose by will, is within the meaning of

Rex v. *Clifton upon Dunsmore*, *H.* 12 *Geo.* 3. *Burr. S. C.* 697. 1 *Bott*, 641. 1 *Nol. P.L.* 468. 3*d ed.* *George Hammond*, when about thirteen years of age, was bound apprentice by indenture stamped with a treble sixpenny stamp, to *W. W.* of *Swinford*, for seven years. The consideration money in the indenture (being 7*l.*) received by the master, was mentioned in the indenture to be

paid by *John Bailey* of *Clifton*, being *charity money* left by *C. B.* widow. The indenture was not stamped with any stamp denoting 6*d.* in the pound to have been paid by the master for every pound of the said 7[illegible], nor any apprentice-duty paid for any part thereof. One *item* of the will was, " To *Clifton* 50*l. to be given as my brother thinks fit;* some of it to put out children apprentices." — And *the Court* held that *this* was a *public charity*, and that therefore the duty was not payable on the apprentice fee.

the words "public charity."

Rex v. *North Owram*, *E.* 13 *Geo.* 2. *Burr. S.C.* 145. 1 *Bott*, 548. 1 *Nol. P. L.* 462. 3*d edit.* The mother of *Samuel Spenser*, the pauper, proposed to put him an apprentice to a master at *North Owram*, who refused to take him because he wanted clothes; but proposed to take him if they would clothe him, or give him money to clothe him with. The grandfather of the boy said he would do so. And it was thereupon agreed, that the grandfather should pay 30*s.* to the master to clothe the boy withal, and that the master should take him as an apprentice. And in pursuance of that agreement, the master did lay out 30*s.* in clothing for the boy. And afterwards an indenture was drawn and executed by the master and the said *Samuel Spenser* the apprentice: And the 30*s.* agreed to be given and laid out as aforesaid was paid by the grandfather to the said master. And in consequence thereof, the said apprentice served his said master under such indenture and agreement for six years in *North Owram.* And in the said indenture a covenant was made and mentioned, for the said master to find clothes for the said apprentice during all the said term. But in the indenture no mention was made of the said sum of 30*s.* so agreed to be given as aforesaid, neither was any duty paid for the same, nor was the said indenture stamped with the additional stamp required by the 8 *Ann. c.* 9. to denote such sum given with the apprentice. It was urged, that the apprentice hereby gained no settlement; both because the sum given with him was not inserted in the indenture in words at length, and also because the indenture was not stamped with the said additional stamp. By the Court: The not inserting in words at length the full sum received or contracted for, subjects the master to a forfeiture, but doth not make the indenture void. And upon the state of the case, the master is to be looked upon in no other condition than if he had been a stranger employed as an agent by the grandfather to clothe the boy: And the grandfather was obliged to repay him, and did repay him. This clothing was before the binding, so that it amounts to no more than putting a boy apprentice ready clothed. It is not a premium received by the master. *The statute means money given for the benefit of the master.* But he has no benefit from this 30*s.* He was not obliged to clothe the boy before he was his apprentice; and this agreement was executed before the indenture was sealed. And it was adjudged that the apprentice gained a settlement under the said indenture.

Where money is given by the apprentice's grandfather to the master to clothe the boy, before he enters upon his apprenticeship; it is not such a consideration as the statute requires to be set out in the indenture.

Rex v. *St. Petrox* in *Dartmouth*, *H.* 31 *Geo.* 3. 4 *T. R.* 196. 1 *Bott*, 554. 1 *Nol. P. L.* 498. *John Hambling* the father of the pauper's husband, *John Hambling*, deceased, having been told by the parish officers of *Townstall* they would give him 20*s.* to bind out his son an apprentice, did so bind him out: And the agreement between *H.* the father, and *M. Haynes*, a widow and the mother of an infant, to which infant the boy was to be bound,

Money given by parish officers as a consideration for an apprentice is not liable to the duty imposed by 8 Ann. c. 9.

R. v. St. Petrox.

§ 35. even though the binding be voluntary; and though the party receiving the apprentice be not privy to the gift.

Such money so raised is a public charge.

was, that he should pay her the said *M. H.* 20*s.* as a consideration for such apprenticeship. And it did not appear that she *knew* of any promise made by the said parish officers to *Hambling* respecting such advancing of money. *Hambling* afterwards received from them the 20*s.*; he paid 5*s.* of that sum to *M. H.* and the remainder he applied to his own use. The indenture had no stamp for the consideration money.—*Per* Ld. *Kenyon* C. J. We must consider this to be a fair binding to the son, because the sessions have not stated it to be fraudulent. Then if it were, as it professed to be, a binding to the son, and not colourably to the mother, the statute requires no duty for the consideration money, even though the money were not raised at the charge of the parish. The act of parliament, taking it altogether, undoubtedly imposes the duty on money paid to the master or mistress ONLY; for it says, "that every master or mistress *to or with whom, or to whose use* any sum shall be given, paid, secured, or contracted for or in respect of any such apprentices," &c. Now here the master did not receive the money which was given with the apprentice, but for reasons (not here stated) the mother received it; and it is not stated that she received it *as agent for her son.* But even supposing that the master had received or contracted for the consideration money, it was not subject to the duty imposed by the statute of *Anne*, because it was money raised at the common and *public charge* of the parish of *T.*, and as such it comes within the proviso in that act. The binding of parish apprentices is not necessarily a compulsory binding.—*Ashhurst* J. giving no opinion on the objection that the payment had been made to the master of the apprentice, and not to the mother, said that the money having been paid out of the public fund of the parish, was decisive.—*Grose* J. agreed.

In parish indentures not necessary to state premium in words at length.

Rex v. *Oadby*, *E.* 58 *Geo.* 3. 1 *B.* & *A.* 477. The premium given by the parish officers upon the binding out of a poor apprentice need not be set out in the indenture in words at length; such an indenture being exempted from any duty by stat. 8 *Ann. c.* 9. § 40. and the insertion of the premium being required for no other purpose but to ascertain the amount of the duty.

The father providing lodging, board, &c. for the apprentice, and the master to pay 4s. per week to the father for the same; no additional stamp is necessary.

Rex v. *Portsea*, *T.* 16 *Geo.* 3. 1 *Bott*, 551. *Burr. S. C.* 834. 1 *Nol. P.L.* 463. 3*d ed.* An indenture of apprenticeship covenanted "that *sufficient meat, drink, apparel* of all kinds, *physic, surgery, and lodging, and all other necessaries,* during the said term should be *found and provided* for the said apprentice *by the said father;* for *which purpose* the said master *was to allow* him or them 4*s.* per week, weekly, during the said term." There was a further covenant for deduction from this payment in case of absence or loss of time. It was objected against receiving this indenture in evidence, that the *duty had not been paid for the lodging, board, physic and surgery* covenanted to be *found by the father.* And it was answered, that the 4*s. per* week was an *equivalent*, and the additional stamp unnecessary. And the *Court* held that this answer was sufficient; as there was nothing before them to shew that 4*s. per* week was not an equivalent; and they were not to presume it was *not* an equivalent; (i. e. that it was not equal to the amount as cost of the board, &c.; if it were less than that cost, then the overplus paid for by the father, would be a benefit to the master, he being at common law bound to provide for his

apprentice; (as to the common law obligation, however, see *Rex* v. *Leighton*, *post.* 482.)—And *Aston* J. hinted that stat. 8 *Ann. c.* 9. § 45. which says, "that where any thing or things, *not being lawful money of G. B.* shall directly or indirectly be given," means *such* other equivalents as a horse, or other valuable thing of that sort; *not* such an agreement as this is, "to provide necessaries for a son."

Apprentice covenanting to provide for himself meat, drink, &c. and the master to pay him wages; it must appear that the wages were not an equivalent, if it is intended to invalidate the indenture for want of the proper stamp.

Rex v. *Walton in Le Dale*, *H.* 30 *Geo.* 3. 3 *T. R.* 515. 1 *Bott*, 553. 1 *Nol. P.L.* 463. *3d ed.* *Richard Cunliffe*, and his family, were removed from *Walton in Le Dale* to *Kirkham*, both in *Lancashire*. On appeal it was admitted that the pauper's original settlement was in *Kirkham*, but the appellants insisted that he had gained a new settlement by apprenticeship in *Walton*; and in support of it offered in evidence an indenture of apprenticeship by which he bound himself to *Croft* and *Hall*, calico-printers, for seven years: The indenture contained, besides the usual covenants, *a covenant on the part of the pauper, that he would provide for himself meat, drink, washing, lodging, apparel, and physic, during the term;* and *his master covenanted to pay him* 5*s. per week for the three first years,* 6*s. per week for the fourth and fifth years, and* 7*s. per week for the sixth and seventh years.* The indenture also contained a proviso that in case the pauper should be visited with sickness, and thereby rendered unable to perform his work, or should neglect the same, he should not be entitled to any wages during the time of such sickness or neglect. And in case he was not employed at the business for which he was bound, then his masters should be at liberty to reduce one half of his wages for two months yearly during the term. The pauper served two years in *Walton* under this indenture, which was written upon the proper stamp, but no additional duty was paid according to stat. 8 *Ann. c.* 9. The respondents insisted that the indenture was inadmissible in evidence, and void, not only for want of a stamp for the additional duty, but also on account of the nature of the contract and the clauses contained in the indenture; but the sessions thought otherwise, and reversed the order.—Ld. *Kenyon* C. J. The case of *Pennington* v. *Sudall*, 1 *Bott*, 551, *n.* which has been cited, cannot be taken as an authority deciding any thing. If we were to infer any thing from that case, it would rather be the reverse of that which has been supposed; because the case went off on an agreement to admit the apprentice to his freedom, which could only have been done under the idea that he had served a legal apprenticeship. The principal question, relative to the additional stamp duty, cannot be decided on this case, as it is now stated. I believe it is the practice at the stamp office to set a value on these sorts of benefits as a matter of course, when the indentures are carried to them. Now here the apprentice stipulated to provide himself with certain things, which it is said the master is bound by law to provide for him, and for which it is contended an additional stamp duty ought to have been paid, because it is a benefit to the master: But on the other hand, the master was to make certain weekly payments to the apprentice. Then how can we say that those payments were not equivalent for the maintenance, &c.? I believe they are much more. But before we can decide the material question, the justices must find the fact, whether those payments were or were

R. v. Walton in Le Dale.

not an equivalent. I therefore studiously avoid giving any opinion on the general question: and it is enough for me to say at present, that it does not appear but that the master gave an equivalent for the benefit which he received. — *Buller* J. I do not see any thing like a benefit to the master, for which an additional duty ought to have been paid. The master covenanted to pay the apprentice so much *per* week; that clearly is not within the statute. Then it was provided that in case the apprentice should be ill and be unable to perform his business, or neglect to do it, he should not receive any wages; but this was no benefit to the master: it was only an agreement that he *should not pay*, but not *that he should receive any thing*. *Per Curiam*, order of sessions confirmed.

The friends of the apprentice covenant to maintain him on every Sunday, and to clothe him; this is not such a benefit as is liable to a stamp duty.

Rex v. *Leighton*, *T.* 32 *Geo.* 3. 4 *T. R.* 732. 1 *Bott*, 556. 1 *Nol. P. L.* 466. 506. 3*d ed.* *J. Price* and his family were removed from *Leighton* to *Church Coppenhall*, both in *Cheshire*. The sessions quashed the order, and stated the following Case: The pauper was bound apprentice by his father (who was settled in *Woolstanwood*) to *R. Lindrop* of *Church Coppenhall*, shoemaker, under an indenture for four years, to learn the trade of a shoemaker, in which was a *covenant by the father that he would, at his own charge, find and provide for his son, good, competent, and sufficient meat, drink, and lodging, on every Sunday during the said term, and would provide him with clothes and apparel of all sorts, (except working aprons and shoes,) and also washing.* There was also (*inter alia*) a covenant on the part of the master to provide for the apprentice meat, drink, and lodging, (except on *Sundays*,) during the term. The indenture was properly executed and attested, and written on a 5*s.* stamp. The pauper served the four years in *Church Coppenhall* for six days and nights in each week, and went to his father's at *Woolstanwood* on every *Sunday*. The father expended 5*l.* and upwards in clothing his son, and in providing meat, drink, &c. for him on *Sundays* during the term; for this no additional duty was paid according to stat. 8 *Ann. c.* 9. — Ld. *Kenyon* C. J. This has been *vexata quæstio* ever since I came into *Westminster* Hall; and various opinions have been entertained upon it. It is true that if an indenture be taken to the stamp office, they will set their value upon every supposed benefit to the master for the sake of the revenue: but that is by no means decisive. The question depends on 8 *Ann. c.* 9. § 32. 45.; the former section imposes a duty on all sums of money given with any apprentice, &c. and the latter enacts, that where any *thing*, not being money, shall be given, contracted for, or secured to or for the use or benefit of the master, the duty shall be paid for the full value of such thing, in such manner, &c. The latter provision was inserted for the purpose of protecting the revenue from any fraud which might otherwise be practised by the parties giving something in lieu of money. For if, as in the case put by *Aston* J. a horse, or other valuable thing of that sort, be given by the friends of the apprentice to the master, that must be considered to be a benefit to the master for which a duty should be paid. It occurred to me early in the argument that, in order to see what would or would not be considered as a benefit to the master, it was necessary to enquire what were the duties that resulted from the bare relation of mas-

ter and apprentice. And I think that the 8 & 9 *W.* 3. *c.* 30. § 5. throws a great deal of light upon that point; because if, from the time of the statute of *Eliz.* to that time, masters could not be compelled to provide for parish apprentices, and that law was made for the purpose, it shews that the obligation of providing for apprentices did not result from the mere relation of master and apprentice; for if it had, that part of the statute of *W.* 3. was unnecessary. The case of parish apprentices is the only one where an apprentice can be put out *nolens volens;* all the others depend on the express stipulation to be made by the parties interested. It has never been held that the obligation of the master extended to the providing of clothes for the apprentice, and yet I cannot distinguish that from the obligation to provide sustenance; for the former are equally necessary with the latter; and in other cases than those of parish apprentices, clothes are generally provided by the friends of the apprentice. But if every thing is to be valued, and a duty set upon it, from which a benefit arises to the master, it might be equally said that the earnings of the apprentice should be liable to the duty. The argument, therefore, that every benefit which the master derives from the apprentice, by proving too much, proves nothing. The authority of *Aston* J. is in all cases worth resorting to, but particularly so in cases of sessions law, in which he was remarkably conversant. And his opinion in the case alluded to is very strong to this point. I think, therefore, that *the clear meaning of the statute of* Anne *is, that where money, or money's worth, is given to the master by the friends of the apprentice by way of premium, a duty ought to be paid for it; but that where meat, clothes, &c. are to be provided for the apprentice, no duty is payable, because there is not any thing given to the master.* — *Buller* and *Grose* Js. delivered their opinions to the same effect. Order of sessions quashed. Consideration.

Rex v. *Wantage*, T. 41 *Geo.* 3. 1 *East*, 601. 1 *Bott*, 559. 1 *Nol. P. L.* 466. 3*d ed.* The pauper, *Thomas Smart*, was bound apprentice to Mr. *Tuck*, ropemaker, in the parish of *St. George's, Ratcliffe Highway*, for seven years. The indentures were lost, but upon parol evidence it appeared that the pauper was to find himself in clothes, board, washing, and lodging; the master was to allow him full journeyman's wages, but was to have 4*d.* out of every shilling of the pauper's earning. The indentures were stamped, but no duty was paid for any consideration reserved to the master. — And Ld. *Kenyon* C. J. said, it was impossible to argue that a part of the apprentice's earnings reserved to the master, was a benefit to him within the meaning of the statute, when by law he was entitled to the whole, and might be rather considered to have given up that part which he did not reserve, than to have acquired any thing: and therefore the pauper gained a settlement under the indenture.

The reservation to the master of part of the apprentice's earnings, is not a consideration within the statute.

Rex v. *Keynsham*, *T.* 44 *Geo.* 3. 5 *East*, 309. 1 *Bott*, 560. 1 *Nol. P. L.* 461. 3*d ed.* The pauper being legally settled at *Keynsham* in *October*, 1791, was bound apprentice for seven years to *J. C.* who resided at *Bath*. The sum of five guineas was agreed to be paid by the father to the master as a premium, and was the sum inserted in the indenture. The only sum paid was the sum of four guineas, which was paid at the time of dating

If the stamp duty be on the sum contracted for, which sum is inserted in the indenture, but a less sum is

R. v. Keynsham.

actually paid by the apprentice, still the indenture is good, and service under it will gain a settlement.

and executing the indenture. The sessions considered the indenture as void under the 8 *Ann. c.* 9. And in support thereof it was argued in K. B. that by the 35th and 39th sections of that statute, not merely the sum *contracted for*, but the sum *actually paid* should have been stated in the indenture, and the stamp proportioned accordingly. — *Grose* J. The act requires, (§ 35.) "that *the full sum* of money *received*, or in anywise directly or indirectly given, paid, agreed, or contracted for," with the apprentice," "shall be *truly* inserted," under a certain penalty: By § 39. the indenture is avoided "if the sum received, given, paid, secured, or contracted for," be not so truly inserted. By requiring the *full sum* to be inserted, it meant that *not less* than the sum upon which the duty was really payable, should be inserted. Here, not only the *full sum*, but *more* than the sum for which the duty was payable, has been inserted, and the duty paid upon such larger sum. Then, more than the act required has been complied with. — *Lawrence* J. observed, that he saw no reason why the master might not recover the remainder of the five guineas in an action. Order of the sessions quashed.

Deed of apprenticeship, containing a covenant by the apprentice to allow the master 2s. a-week, and to have wages and provide for himself during the term, does not require the additional stamp imposed by 44 G. 3. c. 98.

Rex v. *the Township of Bradford*, *H.* 53 *Geo.* 3. 1 *M. & S.* 151. *Bott*, *Cont.* 8. 1 *Nol. P. L.* 466. 473. 3*d ed.* Appeal against an order for the removal of *Thomas Holgate*, his wife, and children, from the township of *Bradford* to the township of *Thornton*, both in the West Riding of the county of *York*; the session discharged the order, subject, &c. upon the following Case: The pauper, *Thomas Holgate*, being upwards of twenty-two years of age, by indenture bearing date the 3d of *April*, 1805, bound himself apprentice to *David Fawcett*, of *Bradford*, for the term of three years and twenty-one weeks, in which indenture was a covenant in the following words: "He, the said *Thomas Holgate*, doth agree to allow his said master two shillings *per* week, weekly, and every week, and to have (leaving a blank) wages, and provide for himself for the abovesaid term." The pauper duly served his master for the above term in *Bradford*, and the two shillings a-week agreed to be allowed, were regularly deducted out of the wages, which he constantly received during his service. The indenture was upon a 15*s.* stamp, and it was objected on the part of the respondents, that the 44 *Geo.* 3. *c.* 98. required a stamp of 1*l.* 10*s.*, and therefore the indenture was void. — After argument, Ld. *Ellenborough* C. J. said, If the words of the covenant were transposed, they would run thus, the pauper to have wages and to allow his master 2*s. per* week, and then there would be no doubt of their meaning an allowance out of the wages simply; and what difference does the order in which they now stand make in the sense? It therefore can never be considered as a boon to the master, who, instead of having the labour of his apprentice for nothing, which he was entitled to have, agrees to pay him wages, deducting 2*s. per* week out of them. — *Le Blanc* J. The master had a right to the whole of the earnings, but allows, by way of wages, such a sum as they are computed at, *minus* 2*s. per* week, on account of his providing for himself. Order of sessions confirmed.

8. Of the Contract.

When it is the intention of the parties to create an apprenticeship, and by reason of some defect either in the formal parts of the indenture, or in the substance of the contract, that intention fails, it cannot be converted into a contract of hiring and service, so as to gain a settlement under it. The preceding cases have shewn what are such defects of *form*, as will avoid an indenture (as to settlements), and it now remains to examine in what manner the contract itself will be insufficient to create an apprenticeship. *Where the contract or instrument is defective, and an apprenticeship intended, it cannot be considered as a hiring and service.*

Salford v. *Storeford, M.* 5 *Geo.* 2. 2 *Barnard,* 39. 2 *Bott,* 363. 1 *Nol. P. L.* 457. It was moved to quash an order of two justices confirmed at the sessions. The sessions state the case specially, that one *Lineacre* had been bound an apprentice by indenture, and served his master the last two years of his apprenticeship in the parish of *Salford;* but that the indenture was not stamped. However, the justices judged this to be a good settlement by way of service, though not as an apprenticeship; and accordingly removed his wife and two daughters from the parish of *Storeford* to the parish of *Salford.* But the Court held this to be no settlement, on the authority of *Cuerden* v. *Leyland,* (*ante,* p. 477.) and quashed the order.

Where the intention is to create an apprenticeship, and the indenture is void, it shall not enure as a service.

Rex v. *Whitchurch Canonicorum, T.* 5 *Geo.* 3. *Burr. S. C.* 450. 2 *Bott,* 368. 1 *Nol. P. L.* 450. 476. 3*d ed.* The pauper, *John Gay,* being of the age of twenty-two years, agreed with a stone-mason that he should take the said *John Gay* apprentice for six years, to teach him the trade, and that the indentures should be executed accordingly. He went and served five years, when they parted by consent; but no indentures were ever executed. It was contended that this was good as a hiring and service. — But by the Court: Here is no hiring expressed or implied. The objects are different. A binding as an apprentice, and a hiring as a servant, cannot be converted one into the other. And the case of *The King* v. *St. Mary Kalendar in Winchester,* was mentioned as in point.

Where one is taken as an apprentice, and the indentures not executed, it cannot be converted into an hiring and service.

Rex v. *All Saints* in *Hereford, H.* 10 *Geo.* 3. *Burr. S. C.* 656. 2 *Bott,* 370. 1 *Nol. P. L.* 476. 3*d ed.* The pauper, *Abraham Lewis,* when a boy, together with his father, entered into an agreement in writing, not stamped, with Mrs. *Tringham* of *All Saints,* reciting, that "whereas the boy, with the consent of his father, is to be bound apprentice to her for seven years," she agrees to pay the boy 25*s.* the first year, the four following years 50*s.* each, the sixth year 3*l.* and the seventh year 4*l.* He served her two years, and received the money agreed on for the said time, then left his mistress; and no indenture of apprenticeship was ever executed. — By the Court: An *apprenticeship* was certainly the thing in view; but no indenture was executed; nor could the agreement be esteemed to supply the want of it, as it was not stamped. Nor can it be considered in the nature of a *service;* for, in that case there must be a hiring for a year, and a service for a year under such hiring. And the binding as an apprentice cannot be converted into the hiring as a servant.

Where an agreement in writing recited that the pauper *is to be bound apprentice,* but was not stamped, no settlement was gained.

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If A. serve seven years as an apprentice, and there be no indenture, he cannot gain a settlement either as an apprentice, or a yearly servant.

Rex v. *Margram, H.* 33 *Geo.* 3. 5 *T. R.* 153. 2 *Bott,* 378. 1 *Nol. P. L.* 450. 3*d ed.* The pauper's mother had made an agreement with Mr. *Tyler,* agent for the *English* copper company, who lived in *Margram* in the county of *Glamorgan,* for him *to serve seven years as an apprentice;* and he served in the said copper works for eight years, and there learned the trade of a refiner, and received weekly wages, as also 20*s.* a year, as a refiner, and he conceived himself serving as an apprentice, but he signed no indenture or agreement whatsoever, nor was any signed by any other person on his behalf, or to his knowledge. The Court, without hearing any argument, were clearly of opinion that this servitude as an apprentice, could not be converted into a service under a hiring.

If there be an agreement in writing, to teach a trade for certain considerations, and the person is to do no other work, it is not a contract of apprenticeship, but is a hiring and service.

Rex v. *Little Bolton, M.* 24 *Geo.* 3. *Cald.* 367. 2 *Bott,* 222. 1 *Nol. P. L.* 475. 482. 3*d ed.* The pauper being legally settled in *Little Bolton,* and being unmarried and having no child, went to *Great Bolton,* where one *William Stott,* a weaver, lived. The pauper went to *Stott,* and asked him if he would teach him to weave counterpanes; *Stott* answered, he would teach him, if he would work with him two years and a half or three years, and the pauper's earnings were to be divided between them; the pauper was to find himself with meat, drink, washing, and clothes; he was engaged on these terms, and an agreement in writing was entered into accordingly. The pauper staid and worked with *Stott* under this agreement in *Great Bolton,* about a year and a half, and then the pauper gave the master 20*s.* to be free, having then married. The master (whilst he was working under the agreement,) found him looms, loom-room, and materials; he never employed the pauper in any work but weaving; the condition upon which he taught the pauper to weave was one half of his earnings. *Stott* received the money, and paid the pauper one half, and looked on it that he had a right to receive it; but sometimes he let the pauper receive it. The agreement in writing was proved to be lost, and therefore parol evidence was allowed to be given of it. The removal was from *G. B.* to *Little Bolton,* and the sessions confirmed the order. — Ld. *Mansfield* C. J. delivered the judgment of the Court. We have looked into the authorities, and we find that all those cases of apprenticeships which have been holden to be defective, and not convertible into hirings and services, speak of the pauper *as an apprentice,* and that he was to serve as such. There is no such statement here; and we are therefore of opinion that it is a good hiring and service. Rule absolute; and both orders quashed. (See *Rex* v. *Eccleston,* p. 490.)

Where the intention is to create an apprenticeship, but for fraudulent reasons the indenture is not duly completed, no settlement can be gained by service under it.

Rex v. *Highnam, H.* 25 *Geo.* 3. 2 *Bott,* 371. 1 *Nol. P. L.* 458. 477. 3*d ed.* The pauper at seventeen years of age went to *William Evans,* of *St. Mary de Crespt,* in *Gloucester,* carpenter, for the purpose of being his apprentice for four years, to learn the trade of a carpenter, but to save the expences of indentures and duty, (four guineas consideration being paid by the pauper to his master,) he and his master agreed to sign an agreement on *unstamped paper,* which was accordingly done. — Ld. *Mansfield* C. J. and the Court held, that it was clear that a fraud was intended; that the pauper meant to be an apprentice and defraud the revenue; and that therefore no settlement could be gained by service under such circumstances.

By an agreement to serve

Rex v. *Laindon, M.* 40 *Geo.* 3. 8 *T. R.* 379. 2 *Bott,* 378. 1 *Nol.*

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to learn a trade at certain wages, and payment of a premium, shall be inferred an intended contract of apprenticeship.

P. L. 448. 475. 478. 481. 3*d ed.* Two justices removed *J. Claydon* from *East Horndon* in *Essex* to *Laindon* in the same county. The sessions on appeal confirmed the order, subject to the opinion of this court on the following case: The pauper being legally settled at *Laindon*, went into the parish of *Ingrave* in *November*, 1792, and after being one month upon trial with *J. Mander*, a carpenter, in *East Horndon*, he entered into the following unstamped written agreement, witnessed and subscribed as under: "*November* 20th, 1792, I, *John Mander*, do hereby agree with *J. Claydon* to serve me three years to learn the business of a carpenter, the first year to have 1*s.* 2*d. per* day; the second year to have 1*s.* 6*d. per* day; the third year to have 1*s.* 10*d. per* day: witness my hand, *J. Claydon*, *J. Mander*. Witness, *Robert Beles*." The pauper proved that at the time of signing the above agreement, he agreed to give *Mander* the sum of three guineas as a (*a*) premium to teach him the said trade, and paid *Mander* 1*l.* 15*s.* which, with 1*l.* 8*s.* due for wages during the month of trial, made the three guineas; and that he was not to be, and was not employed in any other work than that of a carpenter. The pauper worked with and served *Mander* under this agreement the whole three years, and slept the last forty nights in the parish of *East Horndon*, and considered himself as an apprentice under the said agreement; but he thought himself at liberty to leave his master if he used him ill. The counsel for the appellants objected to the parol evidence, explanatory of the above written agreement, being received, which objection was over-ruled by the Court. — Ld. *Kenyon* C. J. The two justices who made this order of removal, and the justices at the sessions who confirmed it, were of opinion that the pauper was not hired to serve *Mander* as a yearly servant, but that the relation which was created between them was that of master and apprentice. The opinions of the magistrates ought not indeed decidedly to influence our judgment, as they have referred the case to us; but when a certain opinion has gone abroad, founded on the decisions of this Court, upon which magistrates have been acting, it ought not lightly to be departed from. The first question that arises in this case is, on the admissibility of the parol evidence. This parol evidence was not offered to contradict the written agreement, but to ascertain an independent fact; and I think it was properly received in evidence. That being so, the case appears to be shortly this: in consideration of three guineas paid by the pauper, the master undertook to teach him the business of a carpenter, and the pauper was to serve three years. I am sorry that nice distinctions were ever taken in the determination of cases on this subject; but notwithstanding those little differences, we must consider the whole class of decisions on this point, and extract the principle from them. It is admitted in all of them, that *if two persons intend to enter into the relation of master and apprentice, and owing to some circumstance the relation of apprenticeship is not duly constituted, as if the indentures be not stamped, this shall not change the condition of the parties;*

(*a*) This fact, viz. the giving the premium, seems to be a material feature in this case, as deciding the service to be under an intention of apprenticeship.

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if they cannot avail themselves of the consequences of the condition in which they intended to stand, they shall not be put into another condition in which they did not mean to place themselves. But when it is urged that this relation can only be formed by using the term "apprentice," it may be observed that the argument would lead to an absurd consequence; for then, if the word "*clerk*" were used in regular indentures of apprenticeship, the clerk would not gain a settlement by serving under the indenture, merely because he was not retained *eo nomine* as an apprentice; but it would be a disgrace to our laws, if we were obliged to decide according to words, without considering their meaning. It was properly said by Ld. *Hardwicke*, that "there is no magic in words;" and he said this not as a discovery just then made by him, but as a maxim that was handed down to him from his predecessors. *If the relation of master and servant be created by the contract of the parties, though they do not use the very words tantamount, it is sufficient.* In this case, a premium was paid by one man to another who engaged to teach him a trade: now, what is that, but an apprenticeship? The term "apprentice" is taken from the *French* word *apprendre*, to learn: unfortunately, Ld. *Mansfield* did not adhere to his first opinion in *Rex* v. *Little Bolton;* but even when he gave his second opinion in that case, he took it for granted, that the rule remained unshaken, that if the parties *intended* to create the relation of master and apprentice, and it were not legally created, so that the apprentice could not gain a settlement as such, he could not acquire a settlement as a yearly servant: and in the subsequent case, *Rex* v. *Highnam*, Ld. *Mansfield* adopted the opinion he had first given in *Rex* v. *Little Bolton*, conformably to all the other cases. Therefore, we may rely on this last case, and if it be not distinguishable from that of *Rex* v. *Little Bolton*, it is sufficient to say that it is subsequent to it, and that the case of *Rex* v. *Little Bolton* is an anomalous case. When we find the current of authorities one way, I should be sorry that a little inadvertence in the Court, in the decision of one case only, should be supposed to break in upon the general rule. For the case of *Rex* v. *Coltishall*, (*ante*, p. 368.) which has been cited, is distinguishable from this class of cases; there, by the agreement of the parties, the pauper was *to do any work* that the master set him about. I am, therefore, most clearly of opinion, that in this case the parties intended to form the relation of master and apprentice; and that as that relation was not legally constituted so as to give the latter a settlement as an apprentice, the relation cannot be converted into that of master and servant, so as to give him a settlement as a yearly servant. And I think we should do infinite mischief, if we were to overturn that which has been so long a settled rule. — *Lawrence* J. The first question raised by the counsel in support of the rule is, that the sessions ought not to have received the parol evidence, because it contradicted the written agreement; but it was not offered for that purpose, but to ascertain a fact collateral to the written instrument, in order to explain the intention of the parties, the instrument being in some measure equivocal. The fact being established, the case was this: on the one hand, the pauper paid a premium to the master, and was to receive certain wages; and, on the other hand, the master engaged to teach him the

business of a carpenter; then the question is, whether or not by this agreement the parties were to stand in the relation of master and apprentice, of which I think no doubt can be entertained. In the case of *Rex* v. *Little Bolton*, Ld. *Mansfield* only went thus far; that it must be collected from the words of the instrument, whether or not the party is to serve as an apprentice; his lordship could not mean to say that a contract of apprenticeship could not be formed, so as to give a settlement to the party serving under it, without the introduction of the word "apprentice." With regard to the instance put at the bar, of servants at inns, it is to be remembered that they do not pay their money in order to learn a trade, but as a premium to the master to let them have the perquisites of that situation; but in the case of a trade, the relation of apprenticeship is created for the very purpose of the party being instructed in that trade: the two cases do not bear the smallest resemblance to each other. Therefore there does not appear to me to be any reason for shaking the authority of the case of *Rex* v. *Highnam*, especially as the great body of cases support it. It is much to be lamented, that settlement cases should ever have been determined on nice distinctions: it would be better to decide them on some general rule, that every person who reads may understand it. Orders confirmed.

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Rex v. *Rainham*, *T.* 41 *Geo.* 3. 1 *East*, 531. 2 *Bott*, 383. 1 *Nol. P. L.* 475. 479. *3d ed.* Two justices by an order removed *Moses Smith*, wife, and six children, by name, from *Rainham* in *Essex* to *Eltham* in *Kent*. The sessions on appeal quashed the order, subject to the opinion of this Court on the following Case: The pauper, on the 8th of *November*, 1784, entered into an agreement under seal with one *Hills*, a sawyer, living in *Eltham*, which agreement is in the words and figures following, *viz.* "An agreement made the 8th of *November*, 1784, between *J. Hills* of *Eltham*, sawyer, and *M. Smith* of the same place; *viz. Smith* doth agree with the said *J. Hills* to serve him for three years from the date of the agreement in the following manner: *viz.* for the first year 10*s. per* week; for the second year 11*s.*; and for the third year 12*s. per* week; and the said *J. Hills* doth agree and promise to learn the said *M. Smith* the art and mystery of a sawyer, which he now follows: and it is likewise agreed that if *Smith* shall wilfully lose any time to the prejudice of *Hills*, he doth hereby agree to pay to *Hills* 3*s. per* day for all such neglect; and it is hereby further agreed, that if *Smith* repents of this agreement before the time expires, he promises to pay *Hills* 10*l.* on demand; or if *Smith* is sick, or by any disorder or misfortune rendered incapable of work, not to receive any pay from *Hills*." The agreement was signed and sealed and delivered by both parties, and lawfully stamped; no premium was paid by the pauper to *Hills*. The pauper, in pursuance of the agreement, immediately went to *Hills* and resided with him in *Eltham* under and according to the terms and conditions of the agreement for two years and a half.—Ld. *Kenyon* C. J. The sessions have stated the deed and the service under it, in fact, leaving this Court to draw the conclusion: and that can only be done in one way, namely, that this was a contract of apprenticeship. The instrument was under seal, and need not be indented. It has been determined, that the party serving need not be retained *eo nomine*

An intent to constitute an apprenticeship, if it is agreed that one shall teach and the other be taught a trade.

Not necessary to retain one *eo*

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nomine as an apprentice.

as an apprentice; but that *it is enough, if the purpose of the contract be, that the one shall teach and the other learn the trade.* That is the case here; for the master engaged to learn, *i. e.* to teach the pauper the art and mystery of a sawyer; and the object of the pauper was to be taught the business. No technical words are necessary to constitute the relation of master and apprentice; nor is it necessary that there should be any premium given to the master. Order of sessions quashed.

A binding by verbal agreement to serve another, on condition of being taught a trade, is not a contract of apprenticeship; but service under it will give a settlement as by hiring and service.

Rex v. *Eccleston, E.* 42 *Geo.*3. 2 *East*, 298. 2 *Bott*, 230. 1 *Nol. P. L.* 475. 3*d ed.* Removal from *Little Bolton* to *Eccleston*, confirmed by the sessions. The pauper had gained a settlement in *Eccleston*, and when about fifteen years of age went into the township of *Tonge* with *Haulgh*, and made a verbal agreement with one *S. Clough* there, who was a weaver of counterpanes, to serve him a year and a half. *Clough* was to teach him to weave counterpanes, and the pauper was to have one half of what he earned, and to find himself in every thing. Nothing else passed between them on making the agreement. The pauper worked under this agreement with *Clough* for a year and a half; except for a fortnight, during which he remained absent; but *Clough* however brought him back into his service, and obliged him to stay a fortnight over the year and a half, in order to make up the time he had been absent from his service. During the time of his service he constantly slept at the house of his mother at *Little Bolton*.— Ld. *Ellenborough* C. J. I give a reluctant assent to the case of *Rex* v. *Little Bolton;* but as the case now before us is in terms the same as is there decided, I think it is better to abide by that determination, than to introduce uncertainty into this branch of the law; it being often of more importance to have the rule settled, than to determine what it shall be. I am not, however, convinced by the reasoning of that case, and if the point were new I should think otherwise. I should consider, as Ld. *Kenyon* said in *Rex* v. *Laindon*, that if the relation of master and apprentice be created by the contract of the parties, though they do not use the very words, master and apprentice, yet, if they use words tantamount, it is sufficient. The word "apprentice," he observed, was taken from *apprendre*, to learn; and what was that but an apprenticeship, where the purpose of the contract was, for one man to *teach* and the other to *learn* a trade. Then what was this intended to be? I should have said, upon general reasoning, that where the contract was, that the master should teach the other a trade, and the latter was to do nothing *ulterior* the employment in that trade, it was a contract *apprendre* in the true sense of the word; and being defective in this case, for want of proper legal formalities, it could not enure as a contract of hiring in a servant. However, as Ld. *Kenyon* did not think proper to over-rule the case of *Rex* v. *Little Bolton* in terms, though he disapproved of what was there said; and as it was not overturned in the case of *Rex* v. *Highnam*, or *Rex* v. *Rainham*, for the reason I at first gave, I think it better to concur in that decision, however unwilling I should have been to have done so in the first instance.—*Per Lawrence* J. The case referred to is directly in point, and not having been over-ruled, it ought to govern the present. *Rex* v. *Laindon* and *Rex* v. *Rainham*, are both very

distinguishable from the present. The orders were thereupon quashed.

Rex v. *Mountsorrell, E.* 54 *Geo.* 3. 2 *M.* & *S.* 460. Removal from *Mountsorrell* to *Quorndon;* the sessions for the county of *Leicester* discharged the order, subject to the opinion of the Court of K.B. on the following case: *G. Swain*, the husband, was born at *Wanlip*, where his father was legally settled. When he was about thirteen years old, his father made an agreement with one *Rawlins* of *Quorndon*, that *R.* should take his son for six years, to teach him the trade of a framework-knitter, and he was to allow *R.* nine shillings *per* week for the first three years, for teaching him and his board and lodging. *G. Swain* accordingly served *R.* six years in the whole in *Quorndon*. And whether *G. Swain* was settled in *Quorndon* was the question. In support of the order of sessions, *Rex* v. *Laindon* was relied on, to shew that this was a defective contract of apprenticeship, and not a hiring and service. That always must depend upon the intention of the parties to the contract; the justices have determined by their finding what their intention was; and surely, for the first three years at least, it was nothing more than a contract for teaching the son his trade; and if it was intended as an apprenticeship for the first three years, it cannot afterwards enure as a hiring and service. Against the order of sessions was cited *Rex* v. *Little Bolton*. But the Court distinguished the case from *Rex* v. *Little Bolton*, inasmuch, as by this contract the son was entitled to none of his earnings, and instead of receiving wages from his master, his master was to receive wages from him as the price of teaching him: it was a hiring of the master to teach the apprentice. The whole contract with the father was bottomed, and had for its object, the instruction of the son and nothing else. Order of sessions confirmed.

Where the father agreed with R. that R. should take his son for six years, to teach him the trade of a frame-work-knitter, and he was to allow R. 9s. a-week for the first three years, for teaching him, and his board and lodging. Held, that this was a defective contract of apprenticeship, and therefore the son did not gain a settlement under it.

9. Of Residence.

St. Bride's v. *St. Saviour's, H.* 4 *An.* 2 *Salk.* 533. A woman who was settled at *St. Saviour's* with her apprentice by indenture, came and took a lodging in *St. Bride's*, and there continued above forty days with her apprentice, who served her there. This was held by the Court to be a settlement of the apprentice at *St. Bride's*, though the mistress had no settlement there.

Settlement of the apprentice does not depend on that of the master.

St. John Baptist v. *St. James's Bishop Cannings, M.* 11 *Geo.* 1. 2 Ld. *Raym.* 1371. 1 *Stra.* 594. 2 *Bott*, 387. Binding and serving will not make a settlement, but the settlement must be by inhabiting, which cannot be but where the party lodges.

Residence is where the party lodges.

But in *Rex* v. *St. Olave's Jury, E.* 3 *Geo.* 1. *Str.* 51. An apprentice is bound to a cobbler, who keeps a stall in one parish, lies in another, and the boy in a third; and the sessions adjudge the settlement where the stall is, because the service was there. But by the Court: The boy has gained no settlement in any of the three parishes, for the stall is not sufficient to give him one, the master lying in another parish.

[*Note.* This case seemeth to stand alone. And by the analogy of the other cases, with respect both to apprentices and servants, it seemeth that the cobbler's apprentice gained a settlement in the

Rex v. St. Olave's Jury.

parish where he lodged. A man may be occupied in several parishes in the day-time, but his home and habitation seems to be where he draws to at night.]

Serving by day in one parish and sleeping by night in another.

Rex v. *Castleton, M.* 7 *Geo.* 3. *Burr. S. C.* 569. 2 *Bott,* 390. 1 *Nol. P. L.* 525. 3*d ed.* The pauper, *John Holroyd,* was bound to a master at *Castleton* for seven years. He worked, dieted, and lodged with his master in *Castleton* for four years and a half, and then married a woman who lived in *Hundersfield.* After which marriage, he worked and dieted all along with his master in *Castleton* in the day-time; but lodged at nights with his wife at her father's house in *Hundersfield,* until the expiration of his apprenticeship, which was about two years and a half from the time of his marriage. — By the Court: Clearly, he gained a settlement in *Hundersfield* where he lodged.

Residence for forty days will gain a settlement though no service be performed, and illness be the occasion of the residence in that particular parish, provided the master reside in the parish.

Rex v. *Charles, T.* 12 *Geo.* 3. *Burr. S. C.* 706. 2 *Bott,* 413. 1 *Nol. P. L.* 506. 524. 526, 527. 3*d ed.* *John Hodge* was bound apprentice by the parish of *Knowstone,* to *John Fisher* of *K.* for an estate which *Fisher* rented of Mr. *L.* who had covenanted with *F.* to discharge him from any expense that he might incur thereby. On *Fisher*'s application, Mr. *L.*'s widow and representative (he being then dead) took the boy; received the parish-money with him, carried him home with her, and afterwards removed to the parish of *Charles,* where the boy resided with her about three years, and then became a cripple by losing both his feet. She thereupon returned him to *Fisher,* who received him, upon her promise to pay him all the expence he should be at in taking care of him; and put him to live with his (the boy's) grandmother in *Knowstone,* at 8*d.* a-week, where he resided above forty days, and then was discharged of his apprenticeship by the quarter sessions. After which, two justices removed the said *Hodge* from the parish of *K.* to the parish of *Charles,* where he served the last part of his apprenticeship before he became disabled and incapacitated for further service, and the sessions upon appeal confirmed the order. It was moved to quash these orders, for that the pauper gained a settlement in the parish of *K.* by his last forty days' residence there. On shewing cause, it was argued, that this was not such a residence of the apprentice at *K.* as could gain him a settlement. It was only a casual, temporary residence; and like residing in a hospital for cure. That *actual service*was necessary, in order to an apprentice's gaining a settlement. And, therefore, this apprentice's legal settlement was in *C.*, where he performed the service of his apprenticeship during the space of three years; and not in *K.*, where he lay ill, as a cripple, and was totally incapable of performing the service at all. Unto this it was answered, that the stat. of the 3 *W.* 3. *c.* 11. says only that, "if any person be bound by indenture and *inhabit* in any town or parish." It says nothing about *service,* or performing any thing. Besides, might not the master dispense with the service? The cases about casual residence do not apply here: and *K.* was the parish where the original binding was. — By the Court: The performance of *actual service* is not the thing material. It is the *residence,* the *inhabitancy* of an apprentice, in a town or parish for forty days, that gains the settlement. And this residence here stated cannot be deemed a casual residence, and therefore is not to be compared to the cases under

Residence by reason of illness

that head. The boy was bound to *Fisher* at *Knowstone*, resided about three years in the parish of *C.*, then became a cripple; was sent back to *Fisher* at *K.*, received by him, and put by him to live with his grandmother at *K.*, and resided there above forty days, during which time he there gained a settlement.

[*Note.* In a subsequent case of *Rex* v. *Stratford-upon-Avon*, (*infra*), it was observed by *Le Blanc* J. That it was not considered in this case that the pauper went to *Knowstone* for the purpose of cure, but that the original master, who lived in the same parish and was bound to receive him, did receive and place him there.]

But a residenc merely on account of illness where no service is perform ed, will not give a settlement: the resi dence must be referable in some way to th apprenticeship.

Rex v. *Barmby in the Marsh*, *E.* 46 *Geo.* 3. 7 *East*, 381. 1 *Nol. P.L.* 526. 3*d ed.* The pauper was removed from *Barmby in the Marsh* to *Selby*, and the sessions quashed the order. It appeared that the pauper, *J. Martindale*, was bound apprentice by indenture dated 1st *April*, 1794, for four years, to *J. B.* of *Hunslet*, in the West Riding, who was the master of a small vessel trading on the river *Ouse*. The pauper slept more than forty nights during such appprenticeship at *Selby*, at different times, but slept the last night thereof at *Barmby*, at his grandmother's, in which latter place he had slept more than forty nights, in consequence of his being ill of a fever. He so went to *B.* with the consent of his master, who received him again as his apprentice; and he never slept there except as above stated. In support of the order of sessions the case of *Rex* v. *Charles* (the last preceding case) was cited. But the Court were all of opinion that the residence of the pauper in *B.* being on account of illness, was not a residence as an apprentice, and that the statute 3 *W.* 3. *c.* 11. which directs that if any person shall be an apprentice, and inhabit in any parish, *such binding and inhabitation* shall be adjudged a good settlement, must be understood of an inhabitation referable in some way to the apprenticeship. But that the residence here with the grandmother was no more referable to the apprenticeship than if the pauper had resided in a hospital or a prison. Order of sessions quashed.

So also *Rex* v. *Titchfield* to the same effect, (*post.* 429.)

Where an apprentice, goes into and sleep in another parish on account of illnes but while ther is occasionally employed by his master, though not in his trade, a se tlement is gained by fort days' residenc in that parish.

Rex v. *Stratford-upon-Avon*, *E.* 49 *Geo.* 3. 11 *East*, 176. *Bott*, *Cont.* 159. 1 *Nol. P.L.* 527. 3*d ed.* Removal from *Stratford-upon-Avon* to *Old Stratford*, and quashed by the sessions; who stated specially, that the pauper, *T. Barnett*, was bound apprentice by the parish officers of *Old Stratford*, to *H. H.* of *Stratford-upon-Avon*, cordwainer. Among other covenants in the indenture the pauper engaged "faithfully to serve his master in all lawful business." He lived with his master twelve months, and then, his thumb becoming affected with *scrofula*, he left his master, and went to his mother's in the adjoining parish of *Old Stratford*, where he continued till the time his master went away from *Stratford-upon-Avon*, which was about two months afterwards. He slept at his mother's house more than forty days, and he never afterwards slept in *Stratford-upon-Avon*, nor in any other place for forty days during the apprenticeship. During the whole time he so slept at his mother's, he went almost every day to his master's, and was on some days employed for three or four hours in each day by his master in going of errands, and was always ready at his master's house whenever wanted by him, but

Residence, by reason of illness.

was unable to work at his trade in consequence of the complaint in his thumb.—*Per* Ld. *Ellenborough* C. J. The facts stated leave no doubt that there was a service of the master by the apprentice while he lodged at his mother's in the adjoining parish. He went to lodge there, indeed, in order to get cured, in consequence of an arrangement between the master and the mother; but he continued to serve his master every day; and though he could not work at the trade himself, yet he performed other service, and he might attend the work and learn the trade of his master; he must, therefore, be considered as still in the service of his master as an apprentice while he lodged with his mother. If the mother had lived more remote from the master's house, so that he could not have served his master while he resided at his mother's for the purpose of cure, that would have altered the case, and likened it to the *King* v. *Barmby in the Marsh;* there there was no service of the master; but here the service to the master continued, and therefore the apprentice gained a settlement by the last forty days' residence in the parish where he lodged with his mother. The other judges agreed, and *Le Blanc* J. added, "while an apprentice continues serving, all the cases agree, his settlement is in the parish where he lodges, and not where the service is performed."

A parish apprentice and his master being both on the permanent staff of the local militia, in consequence of that circumstance, the apprentice resided together with his master, and continued to serve him, in the parish of B. for forty days: The court of K. B. held that this residence was sufficient, and that he thereby acquired a settlement in B. notwithstanding they were both under the control of their superior officers during the whole time.

Rex v. *Chelmsford*, *H.* 60 *Geo.* 3. and 1 *Geo.* 4. 3 *B. & A.* 411. Removal from *Braintree* to *Chelmsford*, both in the county of *Essex*. The sessions, on appeal, confirmed the order, subject to the opinion of the Court of K.B., on the following case: The pauper, on the 15th *December*. 1814, when he was fourteen years and six months old, was bound as a parish apprentice, by indenture, to *S. Spurgeon* of the parish of *Halstead*, to learn the art of a cordwainer, and to serve him until the pauper should attain the age of twenty-one. The pauper served the first four years of his time in the parish of *Halstead*, when the master and the pauper went to and resided in the parish of *Chelmsford*, and the pauper served his master there, under the indenture, for the period of nearly a year. In the year 1809, when about two years of the apprenticeship were unexpired, the master and apprentice having been appointed on the permanent staff of the fourth regiment of *Essex* local militia, of which the head-quarters were at *Braintree*, went from *Chelmsford* to reside there. The master had been appointed a sergeant; and the apprentice a drummer, served the master, and inhabited forty days in the parish of *Braintree*. The pauper received his soldier's pay, whilst working for his master at *Braintree*, but not full wages; and the master refused to give up the indentures, till the expiration of the term expressed therein. The Court of Q. S. were of opinion, that the military duties to which the apprentice was liable on the permanent staff of the local militia, rendered him not *sui juris*, and prevented his gaining a settlement by the service and inhabitancy in the parish of *Braintree*. After argument, *Abbott* C. J. said, In this case I am of opinion, that the pauper gained a settlement by his residence in *Braintree*. It is not necessary for the Court to consider what would have been the effect, if the residence had been separate from that of his master, in consequence of his being in the local militia. Here he continued to reside in the same place with his master, and continued to serve

him during the whole period. That is expressly stated as a fact by the sessions; and it is not impossible, that during a great part of the time, he might be actually serving his master. It is not necessary that the party should reside in a place, because he is an apprentice, so as to give him a settlement there; for *Rex* v. *Stratford-upon-Avon*, (11 *East*, 176. *ante*, 493.) is a distinct authority to the contrary. I am, therefore, of opinion, that the order of sessions ought to be quashed.—*Bayley* and *Holroyd* Js. concurred. Order of sessions quashed.

Residence of sea-faring persons.

St. Mary Colechurch v. *Radcliffe*, *T.* 3 *Geo.* 1. 1 *Stra.* 60. *Set. & Rem.* 105. *Fol.* 159. 2 *Bott*, 386. 1 *Nol. P.L.* 525. 3*d ed.* A boy was bound apprentice to a sea-faring man, and served him for a quarter of a year in the day-time on land, in the parish of *St. Mary Colechurch*, but lay every night on shipboard in *Radcliffe*. But the justices, apprehending the settlement to be where the service was, sent him thither. It was moved to quash this order, and it was likened to the aforesaid case of the cobbler.—By *Parker* C. J. A man properly inhabits where he lies; as in the case where the house is in two leets, he is to be summoned to that in which his bed is. And the order was quashed.

Rex v. *Burton Bradstock*, *E.* 5 *Geo.* 3. *Burr. S. C.* 531. 2 *Bott*, 389. 1 *Nol. P.L.* 525. 3*d ed.* Removal from *Bothenhampton* to *Burton Bradstock*, both in *Dorsetshire*. The pauper was bound by indenture dated *March* 28, 1754, to *John Miller*, of *Bridport*, then owner of a ship, to serve him as an apprentice, and *to learn navigation and the art of a sailor*, and immediately he entered on board the ship, and did *there* serve the said *John Miller* for the term of seven years as an apprentice. The ship was, during that time, employed in a coasting trade from *Bridport* harbour to other ports, and that harbour was considered by the captain and sailors as *the ship's proper home*. During that time the ship was often in the harbour, but never for more than a month at a time. On *December* 7, 1760, she arrived there, and *continued there* till *January* 22, 1761, *being more than forty days*, the apprentice during those forty days lodging, boarding, and serving his master on board the ship: and the ship was never in any other port forty days after that term. On *March* 11, 1761, the ship returned to *Bridport* harbour, and there remained till after the 28th of that month, on which day the apprenticeship expired: and during that time the pauper lodged, boarded, and served on board the ship as before. *Bridport* harbour is a basin within the parish of *Burton Bradstock*, and communicates with the sea by a cut made from it to the sea: and through this cut ships enter.—*Per* Ld. *Mansfield* C. J. *Lying in a parish* is the same whether it be on board a ship, or on land. *Casual* residences, or *accidental* inhabitancies are out of the present case. The harbour is stated to be within the parish of *Burton Bradstock*, and the service was *bona fide* performed there.—*Yates* J. said, That this was not like the case of a vagabond strolling from parish to parish.—*Aston* J. agreed, and said, That he thought *mere watching* on board a ship was not a residence within 3 & 4 *W. & M. c.* 11. Nor would a vessel *in transitu*, accidentally stopping at a port to repair a leak, or any such *casual* occasion, gain a settlement to the sailors on board. (But see *next case*.)

Residence of sea-faring men.

Rex v. *Topsham*, *T.* 46 *Geo.* 3. 7 *East*, 466. 1 *Bott*, 722. 1 *Nol. P. L.* 525. 528. The pauper, *J. C.* at the age of twelve years was bound by indenture apprentice as a mariner to *D. S.* of *Topsham*, ship-owner and coal-merchant. He served his said master for three years, during which he made several voyages, and returned to *Topsham:* residing there in the intervals between the voyages, sometimes for two months. His last voyage was on board the *Reward* of *Topsham*, which first sailed to *Shields*, and from thence to *Poole*, with a cargo of coals. The pauper remained at *P.* upwards of forty days, and slept every night during that time on board the said vessel, as it lay along side the quay. He knew whilst there that his master was become a bankrupt, and gone from *Topsham;* in consequence of which he applied to Mr. *Penny*, the agent and consignee of the vessel, for money, to enable him to return to *Topsham*, who supplied him with half a guinea for that purpose. On his arrival at *Topsham* he resided with his uncle, not being able to find his master, whom he had never seen or served since. The removal was from *Topsham to the parish of Poole, or town and county of Poole*, and the order was quashed by the sessions. In support of the order of sessions, it was contended, that the residence of the apprentice at *Poole*, was only accidental; that in *Rex* v. *Burton Bradstock* (*ante*, 495.), the fact relied on was that *Bridport* harbour was in that parish, and that the pauper's return to *Topsham* by the assistance of his master's agent at *P.* and his subsequent continuance there fixed his settlement in that parish. But the Court agreed, that the residence at *P.* was not casual, but that he was there in the actual employ of his master in his trade, which in its nature required a shifting residence. That the principal doubt in *Rex* v. *Burton Bradstock* was, whether the residence of an apprentice on ship-board were equivalent to a residence on shore in the same parish, and what was thrown out there in respect of *Bridport* harbour being the home of the ship, was principally in answer to that objection. And that the doctrine of casual residence, as applied to places of public resort, which had been thrown out in the *Scarborough* case, had been pretty much shaken in the subsequent case of *Rex* v. *Bath Easton*, (*ante*, 366.) That at any rate, however, the doctrine did not apply to a case like the present, where the apprentice was in the actual service of his master at the time. And that it was clear an apprentice might gain a settlement, by serving his master in another parish, where his master's business called him. That it appeared also, by the case, that the apprentice never returned to his master's service in the parish of *Topsham*, for his master had absconded before his return, and he went to his uncle; and it is expressly found, that he never saw or served his master afterwards. — Order of sessions quashed.

Apprentice not being wanted, goes back to school, his residence there not a residence under the indenture.

Rex v. *Saint Mary Bredin, Canterbury*, *H.* 59 *Geo.* 3. 2 *B. & A.* 382. Where a master-mariner, having no immediate occasion for his apprentice's service, the vessel being then in dock, offered either to turn him over to another master for a time, or to let him go back to school, and the apprentice said he would go back to school and learn navigation; and accordingly did so, and resided above forty days there: the Court of K.B. held that such residence was not a residence under the indentures, and that he did not thereby gain a settlement. — *Bayley* J. said, This is a case new in its cir-

cumstances, and we are called upon now to lay down a rule, which is to govern in future. It has been truly stated, that the words of the statute are only "such *binding and inhabitation*." But I apprehend that the service of the apprentice is one of the essential requisites to confer a settlement of this sort. This service must either actually or constructively be going on during the absence of the apprentice from his master: and the cases say, that where the absence is occasioned by illness, which negatives the existence of such service, no settlement is gained by such a residence. This case is like that of a master who allows his apprentice to return to his friends, having no occasion for his service. That is a suspension of the apprenticeship for the time, and no settlement can be gained by such residence. Here the service did not continue while the apprentice was at school; and therefore I am of opinion that no settlement was gained in this case.

Residence of sea-faring men.

R. v. St. Mary Bredin.

Rex v. *Inhabitants of Brotton, M.* 1 *Geo.* 4. 4 *B.* & *A.* 84. Removal from *Whitby* to *Brotton*, in the N. R. of the county of *York*. Order confirmed by the sessions, subject, &c. Case: —The pauper, *Solomon Marshall*, was bound apprentice for the term of four years, by indenture, bearing date the 11th of *March*, 1813, and made between *Solomon Marshall*, the elder, and *Solomon Marshall*, the younger, of the one part, and one *Addison Brown*, master mariner and ship owner of the other part. In which indenture it was provided, amongst other things, that the said master should find and provide for his said apprentice sufficient meat, drink, washing, and lodging during the said term, *except in the winter seasons, when the ship to which he should belong, should be laid by unrigged, during which time it was agreed, that the said apprentice should maintain himself, or be maintained by his friends;* and in lieu and satisfaction thereof, the said master should pay him, the said apprentice, the sum of 6*s.* a-week, weekly and every week during such time as the said apprentice should not be maintained by his said master; and that the said master should pay, or cause to be paid, unto the said apprentice, as and for wages for such his service, the sum of 75*l.*, in manner following; (that is to say), 12*l.* for the first year; 16*l.* for the second year; 20*l.* for the third year; and 27*l.* for the fourth year; also, 12*s.* a year for washing. The said pauper, while the ship was laid up at *Whitby*, in which he served his said master as an apprentice, during the apprenticeship, resided, occasionally, during the winter, with his parents in *Brotton*, and in the whole, for considerably more than forty days; and he slept the last night, during the continuance of the apprenticeship, at *Brotton*. *Brotton* is twenty miles distance from *Whitby;* and the pauper did not do any work for his master while he resided there, but was liable to have been recalled by his master at any time, if he had been wanted at the ship. The sessions were of opinion, that by this residence at *Brotton* a settlement was gained.—*Tindal*, in support of the order of sessions. This was a residence under the indenture; for it is expressly stipulated in the indenture, that when the ship was laid up in the winter season, the apprentice should reside with his friends; and this distinguishes the present case from *Rex* v. *St. Mary Bredin*, (*ante*, 496.) where no such stipulation existed, and no settlement was gained. If there had been any clause in this inden-

By an indenture of apprenticeship it was stipulated, that the master should provide meat, &c. during the term, except in the winter seasons, when the ship to which the apprentice belonged should be laid by unrigged; during which time the apprentice was to be maintained by himself or friends, the master paying a compensation. Under this stipulation, the apprentice during the winter, resided with his parents in the township of *B.* for more than forty days, not doing any work for his master during such residence: Held, that this was not a residence under the indenture, and conferred no settlement.

Residence of sea-faring men.

R. v. Inh. of Brotton.

ture, enabling the apprentice to work for any other person, it would be different: but there is no such stipulation here. — *Bolland contra.* This case falls within the principles laid down in *Rex* v. *St. Mary Bredin.* That principle was this, that a residence, in order to confer a settlement, must be connected witih a service to the master at the time. Here it is not so connected; for no act of service to the master was done or contemplated during this residence at *Brotton.* — *Abbott* C. J. This appears to me to be a stronger case than the one which has been cited, and that on the very ground on which it has been attempted to be distinguished from it. Here there was a distinct stipulation in the indenture, by which the master dispensed with the service of his apprentice during the winter season, the period when this residence at *Brotton* took place. The residence, therefore, is not at all connected with a service; but is by the very words of the indenture disconnected from it. Then the case cited is an express authority to shew, that an apprentice, by such a residence, does not acquire a settlement: the order of sessions must, therefore, be quashed. Order of sessions quashed.

Casual residence.

Where an apprentice, having at his master's desire left the parish in which his master lived, returns and sleeps in that parish without his master's knowledge, it is not a residence under the indentures.

Rex v. *Smarden, E.* 51 *Geo.* 3. 13 *East*, 453. *Bott, Cont.* 160. 1 *Nol. P.L.* 525. 529. 3*d ed.* Removal of *Richard Gilbert*, his wife, and children, from *Great Chart* to *Smarden*, in *Kent:* — and confirmed by the sessions. The case stated, that *November* 28, 1795, the pauper, *R. G.*, was bound by indenture to *J. Gurr* of *Smarden*, shoemaker, to serve him as an apprentice for seven years: only one deed was executed, which, by common consent, was deposited in the hands of a Mr. *Large* for the benefit of both parties. The pauper served and lived with his master in *Smarden* till within four months of the end of his term; when his master agreed with one *Olloway*, of the parish of *Hedcom*, shoemaker, that the pauper should go to work for him (*O.*) at *H.* during the remainder of his apprenticeship. *O.* was to board and lodge the pauper, and to pay *Gurr* 3*s.* weekly for the services of the pauper. This agreement was made by *Gurr* without consulting *Gilbert* the apprentice. No part of the 3*s. per* week was reserved for the benefit of the apprentice. The pauper went to work, and continued with *O.* in *H.* till within three weeks of the end of his apprenticeship; boarding and sleeping at *O.*'s house in *H.* during the whole time. At this period, as the pauper was told by *O.*, the parish officer of *H.* called on *O.*, and in consequence of a conversation between the officer and *O.* which was not heard by the pauper, *O.* told the pauper that he did not wish to affront the parish, and that he, the pauper, must therefore leave him, and seek work elsewhere. The pauper left *O.* on that day, and went to *Smarden*, where he slept, but did not return to his master *Gurr*, nor had he any intention of doing so, as his master had not used him well, and he knew *Gurr* had no work to employ him upon. *Gurr* did not see the pauper on the night of his sleeping at *Smarden*, nor did it appear that he was acquainted with the circumstance of the pauper being there. The pauper went the following day to *Great Chart*, where he continued to work for his own maintenance until the expiration of the term of his apprenticeship; when that day arrived, he returned to *Smarden*, and his master and he went together to the person in whose hands the indenture of apprenticeship was, by their joint consent, deposited,

and from that person, with the master's consent, he received the indenture and took it away. — In support of the order of sessions, the return of the apprentice to *Smarden*, and sleeping there one night, having before served there forty days, and being earning wages for his master, were the points insisted upon. And the want of knowledge of the fact by the master was argued as of no importance. That the case (*Rex* v. *Topsham*, 7 *East*, 466.) where the return was held not to bring back the settlement proceeds upon the fact of an abandonment by the master and apprentice of the relation of master and servant, which was not so in this case. — Ld. *Ellenborough* C. J. (after stating the previous facts.) Upon dismissal in consequence of the interference of the parish officers, the apprentice returned to *Smarden* for one night, but not to his master, nor into his service, nor having any intention so to do, but merely to get a bed there, as he would have done any where else. Then can this be called a returning into the service of the first master, who was even ignorant of the fact of the pauper's being there? But it is said that the master afterwards recognised the continuance of the relation between them at that time, by going with the pauper when the term of apprenticeship expired, to take up the indenture; but how can that vary the question whether the pauper returned into his service on the night when he slept in *Smarden*, against the conclusion to be drawn from all the other facts of the case? — There being then no residence of the pauper in *Smarden* under the indenture, for any part of the last forty days of the apprenticeship, except by coupling the night when he slept there on his return from *Hedcom* with his previous residence in *Smarden*: And that having been a mere *casual* residence, and not under the indenture, the settlement acquired in *H.* continued there, and the orders must be quashed. — *Grose* and *Bayley* Js. concurred. — *Bayley* said that the last lodging in *Smarden* was not a lodging there under the indenture.

Casual residence.

R. v. Smarden.

Rex v. *Ribchester*, *M.* 54 *Geo.* 3. 2 *M.* & *S.* 135. *Bott. Cont.* 162. 1 *Nol. P. L. Add.* xxxi. 3*d ed.* Removal from *Ribchester* to *Church*. The sessions, on appeal, quashed the order, subject to the opinion of the Court of K. B. upon the following Case: — The pauper, *R. Salthouse*, when of the age of seventeen or thereabouts, was bound apprentice by indenture, dated the 2d of *November*, 1790, to Messrs. *Peel* and Co. block or calico print cutters, for the term of six years; *Peel* and Co. by the indenture covenanting (amongst other things) to pay the pauper six shillings weekly during the term. These indentures were proved to have been executed by the pauper and his mother, but no evidence was given of their having been executed by *Peel* and Co. The pauper during the first two years of his term served *Peel* and Co., and slept in the township of *Ribchester*. After the end of that period, he was sent by his masters to work for them in the township of *Church*, and he accordingly worked in the works of his masters in *Church*, and slept there, except on *Saturday* and *Sunday* nights, when he went to sleep at his mother's in *Ribchester*, and returned on the *Monday*. Eleven other apprentices left the works at *Church* on *Saturday* and returned on *Monday*, which the masters, *Peel* and Co., knew, and it was the usual custom for the apprentices to do so. The pauper continued to work and sleep in this manner, for the

Where an apprentice leaves his master's parish and service, without returning, and goes into another parish where he had been allowed to sleep on the Saturday and Sunday nights, and there sleeps the two following nights: Held, that his settlement was in his master's parish, his service having ended on his quitting on Saturday.

Residence.

R. v. Ribchester.

term of two years longer, at the end of which time he entered into an agreement with one *Walmsley* of *Ribchester*, for five meals in each week, for one shilling and eight pence a week, and he accordingly went every *Saturday* night to *Walmsley*'s house, in *Ribchester*, and returned to the works in *Church*, and slept there, except upon the *Saturday* and *Sunday* nights as before. The pauper continued to reside and sleep in the manner last mentioned for a quarter of a year, until the *Saturday* before *Shrove Tuesday*, 1795, when he received his pay, and never returned again to the service of his masters, having on the night before this *Saturday* slept in the works at *Church*. The pauper, when asked whether when he quitted the works on the said *Saturday* he had determined not to return again, said, that he could not say that he did determine not to return, but that it seemed he did not return. When asked whether, on quitting Messrs. *Peel*'s works in *Church*, for the last time on the *Saturday* afternoon, he had formed any intention not to return, he answered that he had not; being asked the said question as to *Sunday*, he made the same answer; and further said that he could not fix upon any particular point of time when he determined not to return. The pauper slept at *Walmsley*'s, in *Ribchester*, on the *Saturday* night, and for the whole of the succeeding week, and then hired himself into another employment. — After argument, Lord *Ellenborough* C. J. said, This is a case in which there was not any express leave of absence given by the masters, but they had been in the habit of receiving back their apprentices after they had gone home and returned, and by so receiving them they shewed that it was not their purpose to renounce them on that account. In pursuance of this indulgence the pauper went as usual on the *Saturday* night, and it does not appear what his intention was at that time, or that he had formed any upon the subject either of returning or staying away. He did not, however, return on the *Monday*; the end and conclusion, therefore, gives a character and denomination to the original act of departure, *finis nomen operi imponit*. From what was finally done we must collect what was his determination when he first went away on the *Saturday*. We find that he did not return, and that he did not on this occasion, as formerly, avail himself of the absence from *Saturday* to *Monday* as an indulgence. In *Rex* v. *Stratford-upon-Avon* the apprentice continued to perform a species of service with his master while he lodged with his mother, which was a circumstance to cover what might otherwise have been an interruption of the service; it was therefore held that he gained a settlement where he lodged. But here it appears that the apprentice, by not returning to his service on the *Monday*, had not left it on the *Saturday* under the usual indulgence; and therefore he must be considered as having broken the contract on the *Saturday* when he quitted his masters' works; and consequently *Friday* night was the last night of his residence as an apprentice. The settlement therefore* was at *Church*, where he slept on that night, and not at *Ribchester*. — *Bayley* J. It is impossible to say that this apprentice was serving under the indentures of apprenticeship after the afternoon of the *Saturday*, when he received his pay and never afterwards returned. The Court cannot look to what was passing in the mind of the apprentice, but to his acts.

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From the nature of the service he was only employed locally at the manufactory during the ordinary working days; but from *Saturday* to *Monday* he was free from his master. If, then, he was to have that interval entirely to himself, and never returned after its expiration, at what time did he leave his master's service? It must be taken that he left it at the time that interval commenced, for he was not in a condition to do any act of service for his master after the *Saturday* afternoon. — *Dampier* J. The case of *Rex* v. *Undermilbeck*, cited in argument, is the only case like the present; but in that case the master recognised the departure of the servant; for he paid him his wages for the time of his absence. That therefore affords a distinction. Here the apprentice was at weekly wages, and was paid on the *Saturday;* and the *Friday* night was the last night of his being in the actual service of his masters under the indentures.

Ante.

Forty days' residence successively not necessary.

Rex v. *Cirencester*, *H.* 10 *Geo.* 3. 1 *Stra.* 579. 2 *Bott*, 386. 1 *Nol. P.L.* 523. *3d ed.* An apprentice bound in the parish, lived there off and on for three quarters of a year. Exception was taken, that this was no settlement since he might not inhabit forty days together. — But by the Court: That is not necessary. And the order for making it a settlement was confirmed.

If an apprentice live with his master forty days in A., then forty days in B., and then one day in A., he is settled in A.

Rex v. *Brighthelmstone*, *E.* 33 *Geo.* 3. 5 *T. R.* 188. 2 *Bott*, 393. 1 *Nol. P.L.* 523. 524. *3d ed.* *J. Humphrey* and his wife and family were removed from *Wivelsfield* to *Brighthelmstone:* the sessions confirmed the order, subject to the opinion of the Court on the following case: — *J. Humphrey* was, at the age of fifteen years, regularly bound an apprentice to *J. Soper* of *Alfriston*, weaver, to serve from 3d *November*, 1774, for seven years: He entered accordingly, and served and resided with *Soper* in *Alfriston* until 9th *July*, 1781, from that time until 21st *September* following he served and resided by direction of his master in a shop hired by his master at *Brighthelmstone;* he then returned to and served and resided with his master in *Alfriston* until 22d of *October* following, when he was sent by his master to the master's father, *James Soper*, in *West Grinstead*, to serve out his apprenticeship, where he resided until 3d *November* following, when his apprenticeship expired. The Court said, That the decision of this case must be governed by those of former cases, and that the distinction attempted to be made between the cases of servants and apprentices could not be supported, but that they should both fall within the same rule, and that the cases of *Rex* v. *Lowess*, and *Rex* v. *Hulland* governed this case, where it was determined, That when a servant lives with his master forty days in one parish and then forty days in another, and then returns and stays one day in the former parish, his settlement will be there. — And *Ashhurst* J. said, The settlement is shifting until the end of the year, and is at last fixed where the servant sleeps the last night, if there be a residence for forty days in that parish in the whole. Both orders quashed.

(10.) Service with different Masters, by parol Consent of the first Master, without an actual Assignment of the Indentures.

Vide stat. 56 Geo. 3. c. 139. § 9 & 10. Vol. I. p. 154, 155.

Apprentice bound to one with intent to serve another, is settled in the parish where the service is.

Holy Trinity v. *Shoreditch, M.* 3 *Geo.* 1. 1 *Str.* 10. 2 *Bott,* 405. 1 *Nol. P.L.* 509. *3d ed. Parker* C. J. delivered the resolution of the Court: This is an order for the removal of one *Ferrer* from the parish of *Holy Trinity* to *Shoreditch;* by which it appears that *Ferrer* was bound an apprentice to one *Truby,* with intent that he should serve *Green;* which he did for three years: And it hath been insisted that he being bound to *Truby,* who lives in *Trinity* parish, his settlement is there, and not in *Shoreditch,* where the service was. But we are of opinion the justices have done right in sending him to *Shoreditch,* where the service actually was. It is the same thing as if *Truby* had turned him over to *Green;* in which case there would have been no question but he had gained a settlement in *Green*'s parish.

So where an apprentice by a verbal consent of his original master serves another.

St. Olave's v. *All Hallows, T.* 9 *Geo.* 1. *Sett. & Rem.* 153. 1 *Stra.* 554. 2 *Bott,* 406. 1 *Nol. P.L.* 524. *3d edit.* A person is bound apprentice to a master who lives in *St. Olave's.* Afterwards, the apprentice, by his master's verbal consent, lived with and served another person in *All Hallows.* — By the Court: He gains a settlement in the last place; for a person may serve his master in another parish or place; and although he serves another man, yet it is by consent of his master, and the benefit accrues to his master.

Rex v. *St. George's Hanover-square, M.* 8 *Geo.* 2. 2 *Sess. Ca.* 138. 2 *Str.* 1001. *Burr. S. C.* 12. 2 *Bott,* 406. 1 *Nol. P. L.* 508. 510. *3d ed. Alice Wheeler* was bound by indenture a parish apprentice to *George Leicester,* in the parish of *St. George's,* where she lived above forty days under the indenture, and gained a settlement. Afterwards she was by parol agreement hired out by the said master to one *Hall* in the parish of *St. Mary-le-Bone,* and there lived and lodged above forty days, that is, for the space of one year and upwards, the said apprenticeship continuing; and the said *George Leicester,* her master, received her wages, and found her clothes. — By the Court: The apprentice is well settled in *St. Mary-le-Bone.*

So where, after serving another under leave from the first master, the apprentice comes back for the last eight days.

Rex v. *Fremington, E.* 30 *Geo.* 2. *Burr. S.C.* 416. 2 *Bott,* 409. 1 *Nol. P.L.* 510. 521. *3d ed. Mary Bevans,* the pauper, was bound a parish apprentice to one *Richards* in *Fremington;* who, after some time, declared that he had no business for her; and gave her permission to go and work elsewhere, where she would, for her own benefit; and *on his recommendation she was hired to one* Mr. *Nott* at *Sherwell,* from the first day of *June* till *Lady-day,* and served him there for the wages of 32*s.*; and then went back to her master, with whom she stayed eight days, and then the term of her apprenticeship expired. This was held to be a good settlement at *Sherwell,* for she was not discharged from her apprenticeship nor intended to be so. Her master only gave her

leave to go elsewhere and serve another person, for her own benefit. She did so, and afterwards she returned to her master, and was received by him, and stayed with him to the end of her term. And consequently, the service with Mr. *Nott* in *Sherwell* was a continuation of the apprenticeship, and performed under it.

Express consent, by parol, to serve another master, named in such consent.

Rex v. *Tavistock, E.* 7 *Geo.* 3. *Burr. S. C.* 578. 2 *Bott*, 412. 1 *Nol. P. L.* 507. 516. 3*d ed.* The pauper was bound an apprentice by the parish of *Lamerton*, to *R. Rundle*, with whom he lived several years in that parish; and then *Rundle* transferred him, by assignment, to *John Prout* of *Milton Abbott*, with whom he lived till he was twenty years and a half old, at which time he offered his service to *T. M.* of the parish of *Kelly*. *M.* apprehending that he was an apprentice to *P.* sent his two sons to *P.* to know whether it was with his consent that the pauper should live with him. To which *P.* answered, " With all my heart; he may live with *M.* or any body else, provided he performs his agreement with me." Accordingly he lived with *M.* in the parish of *K.* for a year and upwards. He was removed from *Tavistock* to *Kelly*, and the sessions vacated the order. — Ld. *Mansfield* C. J. The only question is, Whether *Prout* consented? It is clear that he did consent, and his consent included that of the first master. — *Aston* J. said, that a second assignment was good, as appeared by *Rex* v. *East Bridgeford*. (See this case, *post*, 422.)

A settlement is gained by a service with a third master under the express consent of the second, to whom the first had assigned the apprentice.

Rex v. *Holy Trinity* in the *Minories*, 30 *Geo.* 3. 3 *T. R.* 605. 2 *Bott*, 423. 1 *Nol. P.L.* 511. 514. 517. 3*d ed.* *Frances Whitfield*, wife of *Joshua Whitfield*, (a patient in *Guy's* Hospital,) with her three children, were removed from *St. Mary Magdalen, Bermondsey*, to the *Holy Trinity* in the *Minories:* The sessions confirmed the order, subject to the opinion of the Court on a Case stating, That *Joshua Whitfield* was bound an apprentice to *John Grimes* of *Tower Hill, London*, tailor, (being a place within neither of the said parishes,) for seven years. He served his master about six years of the term, when his master declined business, and informed the pauper that he wished him to get another master for his good. He then went home to his father, who lived in *St. Olave's, Southwark*, with whom he stayed three or four weeks, and if he could have got a service in that time, he would have taken it; but not meeting with any, he returned to *Grimes*, who thereupon told him that he heard Mr. *Edwards* (who was also a tailor, and lived in *Holy Trinity*) wanted a man; and told him to go to *Edwards*, and make an agreement with him for his good; and that he understood *Edwards* would take him for twelvemonths. He accordingly went to *Edwards*, and entered into an agreement with him in writing, and under seal, covenanting to serve him for twelvemonths in his business of a tailor; and *Edwards* covenanted to instruct him in that business, and find him in victuals, drink, and lodging, and at the end of the term to pay him 12*l.* in consideration of his service. The agreement was not stamped. He was nineteen years of age when he left *Grimes;* and the indentures were not assigned or cancelled; but *after he had served* Edwards *two months*, Grimes *gave him up his indentures*, and he continued to serve *Edwards* to the end of the year, and then received his wages, and applied them to his own use. The question was, Whether he gained a settlement

There must be by the master an express consent to serve a particular person, mere knowledge not enough

Express consent, by parol, to serve another master, named in such consent.

R. v. Holy Trinity in the Minories.

by his service with *Edwards* in the *Holy Trinity*? — Ld. *Kenyon* C. J. It is extremely clear, that while the indentures of apprenticeship continue in force, the apprentice is not *sui juris*, and cannot gain a settlement as a servant. But it has been settled in the case of *Rex* v. *St. George, Hanover-square*, that the apprentice need not continue in the actual service of the first master during the whole term, but that if he be assigned over by the first master, or continue with his privity and consent in the service of another person, he may gain a settlement by serving the second master forty days. The cases which have been decided upon this subject, have been determined on nice distinctions; but still these distinctions ought to be adhered to, as they have settled the boundaries on this point. The one is the case of *Rex* v. *Fremington*, (*ante*, p. 502.) where it was held that the apprentice gained a settlement by serving the second master with the *consent of the first*. The case on the other side is that of *Rex* v. *St. Luke's, Middlesex*, (*post*, 508.) where a *general licence given by the master to the apprentice to serve whom he would*, without any consent to serve any person *in particular*, was held not sufficient to gain a settlement. Now this case falls within the principle of the former of these; for the apprentice went not only with the consent, but with the express recommendation, of the first master to serve the second, and he went there to follow the same trade which his first master had exercised. It has been said that this case must be governed by that of *Rex* v. *Sandford* (*post*, 530.); but there is a solid distinction between that case and the present. For there the master gave up the indentures previous to the pauper's entering into the second service; but *here the indentures were not given up till more than forty days had elapsed after the apprentice had served the second master*; and that is sufficient to give him a settlement in that parish. — *Buller* J. The pauper could gain no settlement by living as a hired servant with *Edwards*, because the indentures of apprenticeship still existed; and the only question is, Whether the master did *expressly consent* to that service or not? For all the cases shew that *mere knowledge* is not sufficient; knowledge does not imply consent. Now here was an express consent and recommendation of the first master to serve the second; and then the case comes precisely within that of *Rex* v. *Fremington*. If indeed the apprentice had not gone into *Edwards*'s service, he would not have gained a settlement by serving any other person, because *a general licence to serve whom the apprentice chooses is not sufficient*. By going into the service of any other person, the apprentice would have gone without the express consent of the first master, and therefore might have been recalled by such master; but he could not have been recalled by the first master from the service of *Edwards*, because of the express consent to serve *Edwards*. This is distinguishable from the case of *Rex* v. *Sandford*; for there the master had given up the indentures, and he had no longer any power over the servant; but here the indentures were in force during the first two months of the pauper's service with *Edwards*. The other judges concurred. Both orders confirmed.

A general licence to serve whom the apprentice chooses is not sufficient.

Express consent given to

See *Rex* v. *Whitchurch*, *E.* 1823. 1 *B. & C.* 574., *post*. 512.

Rex v. *Bradstone*, *H.* 27 *Geo.* 3. 2 *Bott*, 422. 1 *Nol. P. L.* 507.

514. Removal of the pauper from *Llandulph* in *Cornwall*, to *Bradstone* in *Devonshire:* The sessions confirmed the order.—The pauper was bound apprentice by the churchwardens and overseers of the parish of *Petherwynn* in *Cornwall* to Mr. *Lawrence*, of *Launceston*. *Lawrence* duly assigned him by indenture to *William Weeks*, of *Bradstone*, with whom he continued till he was twenty years of age: at this period *William Weeks* and the pauper having some dispute, agreed to part, and *W.* gave the pauper a permission in writing, signifying that he was at liberty, and had his consent to serve any other master. The pauper then left *Weeks* and hired himself to *R. T.* of *Beerferris* for one year. He served the year and received his wages, and then married, and went to live in *Llandulph*, where he has since resided. During the time that he lived in *Beerferris* with *R. T.* he frequently saw *W.*, who knew that he was in the service of *T.*; but *W.* had never given any particular consent to this service with *T.*, or to his serving any particular person; but he told him at parting he would think no more of him. It also appeared on the examination of *T.* that the pauper had hired himself to him for one year, for 6*l.* 10*s.* *per* year, and served out his year; that he was then twenty-one years of age, and the time of his apprenticeship not expired; that when the pauper had been in his service eight months, he (*T.*) met *W.* by accident, who said, "*I find you have an apprentice of mine;*" to which *T.* answered, "*I do not know I have;*" and that *Weeks* then said, "*J. Dingle is my apprentice, but you are welcome to keep him as long as you please, for I shall think no more of him.*" The pauper continued in his service with *T.* four months after this conversation had passed, and at the expiration of his year, he received the full year's wages. The Court being of opinion that this conversation was a sufficient consent on the part of *W.* to the service of his apprentice with *T.* under the said indentures, both the orders were quashed without argument.

If there be an express consent it is sufficient, though the apprentice hire herself as servant.

the second master, and a general leave to the apprentice is sufficient; and this, though the consent were not given till the apprentice had been in his second service for some time.

Rex v. *St. Mary, Lambeth, T.* 25 *Geo.* 3. *Cald.* 533. 2 *Bott*, 419. 1 *Nol. P.L.* 510, 511. The pauper was bound apprentice by indentures for five years, to *Joseph Cooke* of *St. Botolph, London*, with whom she continued a year and a half, when having staid out all night, on her return, *Cooke* and his wife told her she was no longer their apprentice, and might go and look for another place, and gave her money to go to a register office, to look for a place. After this she continued a week with her said master, when hearing of a place, she agreed to hire herself as a servant to Mr. *Harvey* of the parish of *St. Saviour*, at 40*s.* a-year. Mr. *H.* came to *Cooke* and inquired her character, which turning out satisfactory, he hired her on the above terms: in this service she continued to live nine months in the parish of *St. S.* The pauper at this time was under twenty-one years of age; but when she left Mr. *C.* the indentures were not delivered up nor cancelled: but Mrs. *C.* told her the indentures were destroyed; this was not true as to both parts, one of them having been read in evidence. The pauper went afterwards to a friend's house at *Lambeth*, where she lived on charity, but not as a servant; from thence she hired herself as a servant to Mr. *L.* of *St. Stephen, Walbrook*, at 5*l.* *per annum*, without the knowledge of Mr. *Cooke*, where she lived three months. During this service she visited Mrs. *C.*,

The consent of the first master to a subsequent service is sufficiently expressed by his giving the pauper a character with a view to induce the second master to take him.

R. v. St. Mary, Lambeth.

her first mistress, and acquainted her where she was, who said she was glad of it. The removal was from *St. Mary Lambeth*, to *St. Saviour's, Southwark*, and was quashed by the sessions. — Ld. *Mansfield* C. J. The indentures still subsist, and the power over the servant continues; then the question is, whether the master consented? The character was *as servant?* — And *Buller* J. said, The case of *Rex* v. *Ideford* was directly in point. Order of sessions quashed.

The consent of the first master may be implied from circumstances.

Rex v. *Bradninch*, *T.* 21 *Geo.* 3. 2 *Bott*, 418. 1 *Nol. P.L.* 516. 521. *3d edit.* The pauper was born in *Bradninch*, and bound apprentice by that parish to *C. Hill*, till twenty-four years of age; he continued to live with his master till twenty-two, when his master agreed, that if he would give him one guinea in hand, and two guineas more, (being one guinea a-year, during the residue of his apprenticeship,) the pauper should go, and serve where he pleased; but the master said, that he would not deliver the indenture, nor discharge him from his apprenticeship, for he considered him as his apprentice still: the pauper agreed to this, and paid his master a guinea in hand, and went into the parish of *Gittisham* and lived with his father, and paid him 6*d.* a-week for his lodging. He hired himself as a labourer to Miss *S.* by the day, and continued to lodge with his father at *Gittisham*, and serve Miss *S.* till the expiration of his apprenticeship. At the end of the first year of his serving Miss *S.* he went to his master, *Hill*, and paid him one guinea for that year, according to the agreement: his master said, "*You continue to work for Miss* S.; *I think it a very good place, and hope you will continue in it.*" At the end of the second year he went and paid his master the other guinea, who said, you still continue to work with Miss *S.*; he replied, he did; when his master said, he would look out for the indenture and give it him. The pauper did not know there was any conversation between the master and Miss *S.* respecting the apprentice, but Miss *S.* knew the pauper was an apprentice. The removal was from *Gittisham* to *Bradninch*, and was confirmed by the sessions. — Ld. *Mansfield* C. J. There can be no doubt in this case. The pauper was certainly not *sui juris;* for, if he had been he would not have paid a guinea a-year. Both orders quashed.

Mr. *Caldecott*, in his report of this case, states the Court to have been of opinion, that there was in this case, with knowledge of the particular service, a consent, and more, a very strong approbation of it.

Mr. *Nolan* concludes his notice of it by observing, that it was held a sufficient assent to entitle the party to a settlement by service with Miss *S.* as an apprentice.

A particular consent to a particular service will enable the apprentice serving such service to gain a settlement by it, though the apprentice agree to give the master a guinea to

However, in *Rex* v. *Shebbear*, *M.* 41 *Geo.* 3. 1 *East*, 73, 2 *Bott*, 427. 1 *Nol. P.L.* 504. 515. *3d ed.* Two justices removed *John Basset*, with his wife and children, by name from the parish of *Shebbear* to the parish of *Bradford*, both in the county of *Devon;* the sessions, on appeal, quashed the order. *John Basset* the pauper, was bound at seven years of age by a parish indenture to *William Trick* of *Bradford*, till the age of twenty-four. *Trick* assigned the apprentice seven years afterwards to *John Sleeman* of the same parish, with whom he lived there till *Lady-day*, 1780, when two months were wanting of the expiration of

the apprenticeship. He then proposed to *Sleeman* to let him off the remainder of his time, which he at first refused to do. The pauper then offered to give *Sleeman* a guinea if he would let him off, which *Sleeman* agreed to do, and also to give him a new suit of clothes when the guinea was paid: the guinea was not paid to *Sleeman*, nor did *Sleeman* give the pauper the clothes; nor were the indentures given up or cancelled. On the morning of the *Lady-day* above mentioned the pauper went away and offered to serve one *Brent*, who refused to employ him, conceiving him to be an apprentice. The same day he went to one *Battishill*, a blacksmith in *Shebbear*, who said he would not take him without *Sleeman's* consent. The pauper then went to *Sleeman* and told him what *Battishill* had said; *Sleeman* then replied, "*You may go with all my heart. I think it will be a good thing for you to learn the trade.*" On his telling *Battishill* what *Sleeman* had said, *Battishill* agreed with him; and he lived with him in *Shebbear* for the last forty days and upwards, before he attained the age of twenty-four. — Ld. *Kenyon* C. J. This case is very distinguishable from that of *Rex* v. *Crediton*, *post*. 508. which we decided a few days ago: and upon the same ground on which we there held that no settlement had been gained as an apprentice by the subsequent service, I think it as clear, that the sessions have drawn the right conclusion in this case in adjudging that a settlement was gained by the service with the second master. There is no doubt but that the indentures still subsisted in point of law, not having been delivered up or cancelled, nor any consideration paid for doing so. In the former case we were satisfied that the master did not really mean to give a particular assent to the second service; he had there told the apprentice to go where he pleased, having no further occasion for him, and when the apprentice told him where he was going, he answered that he might go there or any where else. But here the master was applied to for his consent to the particular person named; and he expressed his approbation of the apprentice going there, telling him that it would be advantageous to him to learn the trade. This then was not an indiscriminate leave to serve any person, but a particular consent to a particular service; and this is the plain line of distinction between all the cases; which it is to be hoped will make an end of all such questions in future. Perhaps it would have been more correct for the sessions to have found the fact of such particular consent, instead of only finding the evidence of it, as they have done; and if any thing were likely to turn upon it in this case, it should be sent down to them again to find that fact. But I do not know what advantage could accrue from thence to the respondents, for in effect the sessions have drawn that conclusion, and upon these premises I do not see how they could have drawn any other.

R. v. Shebbear. — be let off the remainder of his time; and the master agree to give him clothes when the guinea is paid.

But the mere Knowledge of the Master is not sufficient.

Rex v. *Ideford*, *H*. 16 *Geo*. 3. *Burr*. *S*. *C*. 821. 2 *Bott*, 415. 1 *Nol*. *P.L*. 511. 3*d ed*. *Mary Street* the pauper was legally bound apprentice by the parish officers of *Chudleigh* to *Philip Mathews* of that place, till twenty-one, or day of marriage, and lived

After a parol assignment of a parish apprentice, and part service under

R. v. Ideford.

that assignment, the apprentice runs away from the second master, then lives with a third person nine months in the original parish, without consent either of the first or second master, and remains afterwards two years in that parish, in good health, and the indentures then expire; no settlement is gained at such original parish.

with him there four years; when he assigned her, by parol, to *Joseph Stelliford* of *Ideford*, with whom she lived seven months; when she ran away from *Stelliford*, and returned to *Chudleigh*, and resided there for nine months as a servant to *John Hayes*, at a public house, *with the knowledge, but without any express consent of* Matthews *or* Stelliford; and *John Hayes* did not know that the pauper was an apprentice. *Matthews*, the original master, resided in *Chudleigh* during the time that the pauper lived with *Hayes*, and frequently saw her there, and applied to *Stelliford* to take her back to *Ideford*, and threatened to put him to trouble if he did not. During the time that she was at *Chudleigh* as aforesaid, she was taken ill, and part of the time so ill in the work-house, that she could not be removed, and was then relieved by *Stelliford* in the work-house there. She never returned to *Ideford;* but continued for the last two years of her apprenticeship in *Chudleigh* in good health, where the apprenticeship expired. It was argued, that the pauper's service at *Chudleigh* after her return from *Ideford*, was a service under the apprenticeship; being by consent of her master, *Stelliford*, who manifestly considered her as his apprentice whilst she resided there. — But by Ld. *Mansfield* C. J. Here is no consent of the master, either express or implied; his mere knowledge of it doth not imply his consent. And the whole Court were unanimous, that no settlement was gained at *Chudleigh* after the pauper's return from *Ideford*.

General consent given to the apprentice to work where he will, not sufficient.

Rex v. *St. Luke's* in *Middlesex*, *T.* 5 *Geo.* 3. *Burr. S. C.* 542. 1 *Blac. Rep.* 553. 2 *Bott*, 411. The pauper *William Hutchins* was bound a parish apprentice to one *Frost*, a shoemaker in *Southwark*, till his age of twenty-four, and served him there three years. The master then removed to the parish of *St. Luke* in *Middlesex*, taking the apprentice with him, where he served four years. The *master* then *told him to go about his business, and work for himself;* but the indentures were not cancelled, nor given up. The pauper hired himself as a journeyman to several masters of the same trade in different parishes; and believed the said *F.* did not know what master he worked with after he left him, nor ever called upon him to account for what money he earned, and the pauper applied the same to his own use. He worked and lodged the last forty days before he attained the age of twenty-four years, in the parish of *St. Leonard's Shoreditch*. The question was, whether he gained a settlement at *St. Leonard's* by this service? — By Ld. *Mansfield* C. J. and the Court: — The indenture of apprenticeship remained in force, and the relation of master and apprentice continued. But this service in *St. Leonard's* cannot be considered, either as a service of his first master, or as an assignment. He was incapable of making a contract by way of hiring and service, or of any act to gain a settlement. If his master had assigned him over to a particular person, it would have gained him a settlement as a service to the master. But this working in *St. Leonard's* was not carrying on the business of the first master there, nor any service under the indenture. But the settlement is in that parish where he had served his first master as an apprentice for forty days, which was in *St. Luke's*.

The master's consent must

In *Rex* v. *Crediton*, *M.* 41 *Geo.* 3. 1 *East*, 59. 2 *Bott*,

426. Two justices removed *W. Milton*, his wife, and daughter, from the parish of *North Tawton* to that of *Crediton*, both in the county of *Devon*. The sessions on appeal confirmed the order, subject to the opinion of the Court, on a case stating, That *W. Milton* the pauper was bound apprentice to *Andrew Matthews*, whom he served above forty days in the parish of *Crediton*. *Matthews* failing in business, *told the pauper* that *he had no further employment for him*, and *he might go where he pleased*. Afterwards and before leaving his master, one *Haydon* came to inform the pauper that one *Underhill*, who wanted a boy, was at an inn in the neighbourhood of his master's house, and that he should go to the inn. As the pauper was going out of the house, his master met him, and asked him where he was going? The pauper told him he was going down to *Underhill*. *Matthews* said, "*he might go there, or where he pleased*." Thereupon the pauper left *Matthews*'s house, and went and hired himself and lived with *Underhill* above forty days in the parish of *Sampford Courtenay*, but no communication appeared to have taken place between the original master and *Underhill*. The question submitted by the sessions was, whether this were such an assent of the original master to the apprentice serving *Underhill* as enabled the apprentice to gain a settlement in *Sampford Courtenay*, by his service with *Underhill* there. *Rex* v. *Tavistock* was cited amongst other cases, to shew that this was a particular leave to a particular person. — Lord *Kenyon* C. J. The service with *Underhill* was not a prosecution of the service of the original master. Some of the cases upon this subject have been carried to a greater degree of refinement than might be desirable if they were to be decided again *de novo*; but we are to be governed by the general principle resulting from them, and not by particular expressions, which vary in every case: it would have been better perhaps to have confined the power of gaining a settlement to a service with the original master. The case of *Rex* v. *St. George's Hanover-square*, (*ante*, p.502.) first broke in upon that line, and determined that an apprentice serving another by the consent of the original master might thereby gain a settlement: from thence has issued such a train of decisions as it is difficult to follow; however, the general principle of them all is to be found in *Rex* v. *Austrey*, (*post*, p.529.) where Lord *Mansfield* said, that in order to gain a settlement by the apprentice serving another master, there must be "an express and implicit leave and consent given by the master to the particular service," so as to be considered as "a service of his master under the indenture," and not, as he observed in that case, "a leave intended to be quite general;" or, as here, a general quitting of the service, and leave to go where the pauper pleased. Here the master first tells the pauper he had no longer any employment for him, and he might go where he pleased; and then somebody having sent for the pauper, he tells his master, on being asked where he is going, that he is going to *Underhill*, on which the master repeats in effect what he had before said, that he might go there, or where he pleased; meaning that he no longer looked for his service, or took any concern how he disposed of himself. — *Grose* J. There must be a particular consent of the original master to the service with another, in order to give a settlement. In *Rex* v. *The Holy Trinity in the Minories*, there

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be express, and for the particular service.

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Whether consent or not, a fact for the sessions to determine.

was a particular recommendation to a particular service, which the Court held sufficient for that purpose. Whether there be such a particular assent of the original master to the subsequent service is more a question of fact than of law, and here the sessions have in effect negatived that fact, by finding that the pauper gained no settlement by the service with the second master. Order of sessions confirmed.

So also it was held in *Notton* v. *Roystone*, *M.* 9 *Geo.* 3. *Burr. S. C.* 629. 2 *Bott*, 412. 1 *Nol. P. L.* 500. 512.

Rex v. *Inhabitants of Ashby-de-la-Zouch*, *M.* 58 *Geo.* 3. 1 *B. & A.* 116. Removal of *Anne Sutton*, from the parish of *Burton-upon-Trent*, to the parish of *Ashby-de-la-Zouch*. Order confirmed, subject, &c. Case: — By indenture, (June 16. 1804) the pauper being ten years of age, was bound apprentice by the parish of *Stretton-in-the-Fields*, in the county of *Derby*, until she was twenty-one, to Messrs. *Pilkinton* and *Webster*, of *Ashby-de la-Zouch*, cotton-manufacturers, and continued to work with them in that parish until *November*, 1813, when they relinquished the manufactory, and gave up business, having at that time a considerable number of female parish apprentices, who wore a particular dress in their manufactory. Previously to their relinquishing the business, *Webster* went over to *Peel*, one of the partners in another cotton-manufactory at *Burton-upon-Trent*, and proposed assigning to him the apprentices, but did not mention either their names or their number. *Peel* having agreed to take them, an application was accordingly made by *Webster* to two magistrates in order to get the assignment completed, but they objected that it could not be done without the consent of the several parish officers. *Webster* then told *Peel* that he was willing to execute as far as he had promised, but nothing further could be done than the verbal agreement before made, which was, that he, *Peel*, should have all their apprentices. The pauper was, at that time, with *Pilkinton* and *Webster*. About 18 of these apprentices were sent to Mr. *Peel*, at different times: with each party one of *Pilkinton* and *Webster*'s servants was sent to deliver them to the overlooker of Mr. *Peel*'s manufactory; with some, their indentures were sent over; with some, they were not. Many did not go to Mr. *Peel*'s, but went where they pleased, and procured places for themselves. After it was found that the parish apprentices could not be formally transferred, the mother of the pauper applied to *Webster* to have her discharged, as she wished to get her a place elsewhere, and she went home to her mother, with *Webster*'s knowledge and consent, and with his permission to get a place where she pleased. When she had been at her mother's about five weeks, *Webster* called at her mother's house, and finding that she had not got into service, he recommended to the mother that she should take her to *Burton*, to *Peel*'s, where she could get employment. After she had been at home about two months, the pauper went over to *Peel*'s with another girl; no other person accompanied them, and they were in their ordinary dress, not that of *Pilkinton* and *Webster*'s manufactory, and their indentures were not taken with them. They were both hired as servants for fifty-one-weeks, by the clerk or foreman of *Peel*'s works, who did not know that they were apprentices, and who told them at the time that they might come into the service; but if they

did they should be hired for only fifty-one weeks. Shortly afterwards, *Webster* met the mother, and asked if the pauper was gone to *Peel's*, and was pleased at hearing she was; and afterwards meeting the pauper, he asked her where she was; and on being told that she was at *Peel's*, he said that it was the best thing she could do. In *October* last, *Webster* being applied to by one of his apprentice girls who was at Mr. *Peel's*, for her indentures, gave them to her, and at the same time sent to the pauper at Mr. *Peel's* her indentures, which were then expired, saying, "Take them to *Ann Sutton*, for they are of no use to me." He also sent over at the same time the indentures of another girl who had been his apprentice. The pauper continued in the service of *Peel* until she was removed in consequence of being then with child.—The Court were of opinion that the pauper gained no settlement by the service with *Peel*, considering that the facts proved did not amount to a particular assent on the part of the original masters to the second service, and consequently that the relation of master and apprentice between *Peel* and the pauper never existed. In support of the order of sessions, it was contended, that there was not any express assent of the master to the particular service; but that the pauper was permitted by *Webster* and *Pilkinton* to go to her mother, and get a place where she pleased: and then no settlement was gained, according to *Rex* v. *Crediton*. (*ante*, p. 507.) At all events this was a question for the sessions; and they have expressly determined that the facts proved did not amount to a particular assent; and this being rather a question of fact than of law, their finding is conclusive.—Lord *Ellenborough* C. J. If we do not take all jurisdiction from the sessions, their finding on this point must be conclusive. The new service was for fifty-one weeks, a different period than that for which the old service was to endure. It cannot, therefore, be considered as a continuance of the old service. It is a discrepant service in all its particulars. *Contra*, it was contended that *Pilkinton* and *Webster's* original intention of assigning all their apprentices (of whom the pauper was one) to Mr. *Peel*, coupled with the approbation subsequently expressed by *Webster*, on hearing that the pauper had gone to *Peel*, and the delivery of the indenture, afforded the strongest evidence of an assent to the particular service; and they cited *Rex* v. *Shebbear* (*ante*, p. 506.) *Rex* v. *Bradstone* (*ante*, p. 504.) *Rex* v. *St. Mary Lambeth* (*ante*, p. 505.) and *Rex* v. *The Holy Trinity in the Minories* (*ante*, p. 503.) and observed that in those cases the evidence of assent to the particular service was not so strong as in the present instance.—Ld. *Ellenborough* C. J. It has been expressly found by the sessions, that this pauper was not an apprentice, and it appears to us most clearly that the prior service was not continued; for when the apprentice applied to come into the service, she was told, that she should be hired only for fifty-one weeks, which shews that this was not a continuance of the old service. I think the facts of the case warrant the sessions in the conclusion at which they have arrived.—*Bayley* J. I am of the same opinion. It was for the sessions to draw the conclusion. They have concluded that the relation of master and apprentice did not exist, and I think they have drawn a right conclusion. The master, to whom the pauper went to be hired, was never apprised of the relation of master

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and apprentice having subsisted: he hired her as a servant, which constitued a new and a different relation; it seems to me, therefore, that the sessions were well warranted in drawing the conclusion, that the relation between these parties was not that of master and apprentice; and if it were not, then the service of the pauper could not confer a settlement.— *Abbott* J. I am of the same opinion. The sessions have drawn the only conclusion which persons of a sound understanding could have drawn from the facts stated.— *Holroyd* J. concurred,— Order of sessions confirmed.

Before the expiration of the term of an apprenticeship, the apprentice asked his mistress leave to go into another service, without mentioning where he was going. The mistress said that she was not against it, if he could better himself. The apprentice then went and hired himself to *A. B.*, in another parish, for a year, at certain wages. He then returned to his mistress, and told her what he had done, and she said that she was not against it. The apprentice then went to his new place, and lived with *A. B.* for three months: Held, that the service with *A. B.* was *not* a service under the indenture; first, because there was not a particular assent of the mistress to that service; and, secondly, because the service with *A. B.*

Rex v. *Inhab. of Whitchurch, E.* 4 *Geo.* 4. 1 *B.* & *C.* 574. Upon appeal, against an order of two justices, whereby *Joseph Pierce*, his wife and children, were removed from the parish of *Drayton* in *Hales*, in *Shropshire*, to the parish of *Whitchurch*, in the same county, the sessions confirmed the order, subject to the opinion of this Court, upon the following Case:—The pauper, *Joseph Pierce*, by an indenture of the 7th *April*, 1798, was bound a parish apprentice, till twenty-one years of age, by the appellant parish, to one *Margaret Dutton*, residing in the same parish, under which he there served her for six years, when the indenture having still three years to run, and the pauper not agreeing with Mrs. *Dutton*'s foreman, asked his mistress leave to go into another service, to which she consented, saying "she was not against it if he could better himself." He did not mention were he was going. The pauper went to one *Jenkinson's*, in the parish of *Rees*, and hired himself to him for a year, at 3*l.* 16*s.* wages. He returned and told his mistress, who said, "Very well: she was not against it." In a few days, he went to his new place, and in about a fortnight returned to his old mistress for his clothes, who said, "she hoped he liked his new place;" and he said, "he did." Under these circumstances, he lived with *Jenkinson*, in the parish of *Rees*, three months. In support of the order of sessions, the Case *Rex* v. *Inhab. of Crediton, ante*, p. 508, was cited. *Contra. Rex* v. *Inhab. of Shebbear, ante*, p. 506. [*Abbott* C. J. There the new master took the pauper *as an apprentice* of the former master.] — *Per Curiam.* The question in this case is, whether the service with *Jenkinson* was a service under the indenture. It is clear that the justices have thought that it was not; because they have confirmed the order of removal. They have not said so in express terms, for then there could be no argument upon the subject before us; but they have left it to us to say, whether the conclusion they have come to was right or wrong. We are clearly of opinion, that their decision was right. Much subtlety has been introduced into this branch of the law, of which some of the cases cited furnish examples. Of late the Courts have inclined to decide these questions upon plain principles. In this case, it is impossible to say that the pauper served *Jenkinson* as an apprentice under the indenture. It does not appear that *Jenkinson* even knew that the pauper was an apprentice. It appears that Mrs. *Dutton* had consented to the pauper's going into another service generally; but then he had not mentioned to her where he was going. Afterwards, when he had hired himself to *Jenkinson*, he returned and told his mistress: but *Jenkinson*'s name was not even then mentioned. She did not dissent from it; but there was no expresss consent to that particular

service. It has been urged, that the subsequent assent of the first master is sufficient to make the second service a service under the indenture; but the contrary is established by *Rex* v. *St. Helen's, Stone Gate*, (1 *East*, 285.) Besides, under these circumstances, the service to *Jenkinson* was under a contract of yearly hiring. The pauper served under that contract as a servant, and not under the indenture as an apprentice; and very different duties result, on both sides, from these different descriptions of service. The case of *Rex* v. *The Inhab. of Ashby-de-la-Zouch*, 1 *B. & A.* 116. is strongly in point with the present. The want of knowledge in the second master, and the hiring of the pauper as a servant, are common to both cases; and those facts distinguish this from most of the cases cited in argument. For these reasons, we are of opinion, that the service with the second master was not a service under the indenture, and, consequently, that the order of sessions is right. — Order of sessions confirmed.

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was not an apprentice, but as a servant under a contract of hiring.

Rex v. *Inhab. of Bow, otherwise Nymett Tracey, M.* 56 *Geo.* 3. 4 *M. & S.* 383. Upon appeal, the quarter sessions for the county of *Devon* quashed an order of justices for the removal of *John Hawkins* from *Bow*, otherwise *Nymett Tracey* to *Okehampton*, subject to the opinion of the Court K. B. on the following case: The pauper on the 24th of *January*, 1767, when he was nearly eight years old, was bound as a parish apprentice by indenture to one *Sillifant* of the parish of *Northawton*, to serve until he attained the age of twenty-four. He served accordingly until within a short time of his attaining the age of twenty-one, when his master being about to leave *Northawton*, and no longer wanting the pauper's service, told him that he might leave him, and go where he liked, and shift for himself, but that if he could not provide for himself he might return to him. Upon this the pauper quitted *Silifant*, but his indentures were not given up to him, nor cancelled, nor was any thing said about them. Upon quitting *Silifant* he hired himself to another person in *Northtawton*, and served until nearly four months after his being of age, when, without any communication with *Sillifant*, he bound himself as an apprentice by indenture to one *Webber* at *Okehampton* for three years, to learn the business of a tanner, to which indenture his father was a party as a security for his service. Under this indenture he served *Webber* at *Okehampton* for the three years. And the question was, whether the pauper acquired a settlement by this service with *Webber* at *Okehampton*. After argument, Lord *Ellenborough* C. J. said, If the pauper was not in a condition to convey to *Webber* a present right to his service at the time when he bound himself by indenture to him, I am at a loss to discover how it could enure as a valid binding afterwards. Now at the time when the second indenture was made, the first master had not parted absolutely with the apprentice, though I agree that he had done that which might be an answer to any action by him on the indenture, or for harbouring his apprentice. Still this being but a parol agreement on his part that the apprentice might go whither he would, the master might by parol resume what he had granted by parol, the relation which had been created by deed not being capable of being dissolved by parol. The original indenture therefore still subsisted both as to master and apprentice:

A parish apprentice was before the passing of the statute 18 G. 3. c. 47. bound till twenty-four, and served till nearly attaining twenty-one, when his master, being about to leave the parish and no longer, wanting his service, told him that he might leave him and go where he liked, and shift for himself, but if he could not provide for himself he might return to him; upon which he quitted, and when he was about four months past twenty-one, bound himself by indenture as apprentice to another master for three years, and served with him the three years: Held, that he did not acquire a settlement by service under

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the second indenture.

as to the master, because he might revoke his licence and resume his authority; and as to the apprentice, because if he was unable to provide for himself, he was at liberty to return. Order of sessions confirmed.

If the master tell the apprentice, he may do the best he can for himself, and afterwards the master upon hearing from the second master that the apprentice had procured a place, express his satisfaction at it, it is not such a consent as will give a settlement.

Rex v. *St. Helen, Stonegate, H.* 41 *Geo.* 3. 1 *East*, 285. 2 *Bott*, 429. 1 *Nol. P.L.* 512. 518. 3*d ed.* Removal from *All Saints, Peaseholme*, to *St. Helen, Stonegate*, and confirmed by the sessions. The pauper on the 1st of *January*, 1786, was bound for seven years to *T. Mawman*, of *Thirsk*, bricklayer, with the consent of his brother *W. Chapman*, his father and mother being then both dead. At the end of three years and a half the pauper ran away; and afterwards his master assigned him by parol to *W. C.* with whom he afterwards lodged for about three years, and during the last two years of that time he slept in *St. Helen Stonegate*. About the end of the year 1792, the pauper being about to marry, applied to *W. C.* and told him he wished to work and provide for himself; to which *C.* consented, and said *he might do the best he could for himself:* he did not afterwards consider him as his apprentice, but the indentures were neither given up nor cancelled, nor any thing said about them. In the same month the pauper applied to *T. Penneystone* for work, who employed him, and paid him weekly wages. About a month after *T. P.* met *W. C.* and told him he had got his brother at work; to which *W. C.* replied, "*I am glad of it, he was a bad lad, and I could make nothing of him.*" The pauper continued to work for five months after this with *T. P.*, and during the last three months of that time slept in the parish of *St. John Delpike*, in *York*. The indenture was not given up by *W. C.* to the pauper till after the time expired. In support of the order of sessions, *Rex* v. *Crediton* was cited, and also *Rex* v. *Sandford*, (*post*. 530.) to shew that an express consent of the master to the particular service was necessary, and that *where the parties acted under the idea that the indentures were at an end, although they were not in fact delivered up, or cancelled, there no settlement could be gained as an apprentice under them.* On the contrary side were cited *Rex* v. *Bradninch*, and *Rex* v. *St. Mary, Lambeth*. But the Court said that *Rex* v. *Crediton* (*ante*, 508.) was expressly in point, and they confirmed the order of sessions.

Where the parties act under the idea that the indentures are at an end, no settlement can be gained as under them.

If an apprentice be by parol transferred by his master, (not having taken out letters of administration,) service with the second master will be a service under the indenture.

Rex v. *East Bridgeford*, *T.* 13 *Geo.* 2. *Burr. S. C.* 133. 2 *Bott*, 407. 1 *Nol. P. L.* 507. 509. 513. 3*d ed.* *Thomas Alt* was bound apprentice by indentures to *William Henston* of *Orston*, webster, for nine years, and duly served him the first four years of the term at *O.* *H.* then dying intestate and insolvent, his widow, without any administration taken out, assigned him over to *Edward George* of *Staunton*, webster, a certificate man, for the remainder of the term, in consideration of 3*l.* paid to her by *George*; and pursuant thereto he lived with and served *George* about a year and a half at *S.*; and then *G.* in consideration of 40*s.* paid him by *Thomas Baggaley* of *East Bridgeford*, webster, did, with the consent of *Alt*, assign him over, by verbal agreement, to *Baggaley* for the remainder of the term of nine years; and he accordingly lived and served out the remainder of the term with *B.* at *East Bridgeford*. The removal was from *O.* to *East B.*, and was confirmed by the sessions. The objection to the order was, that the widow had not taken out letters of ad-

ministration, and had no authority to make such assignment. The whole Court were unanimous, that this was a good settlement in *E. B.*, where the apprentice lived about forty days with *Baggaley*. Since to this assignment, though only a verbal one, there was the consent of all the parties concerned, and he lived and inhabited at *E. B.* under the terms of the apprenticeship, as an apprentice bound according to the act of parliament. And they observed that an assignment of an apprentice is not considered a strictly legal transaction; (because the person of a man is not strictly and legally assignable;) but it has been an equitable construction, that where an apprentice has lived forty days under an assignment, he shall thereby gain a settlement, because of the *consent*.

Service with a second master by leave of the representative of the first master.

Rex v. *Chirk*, *T.* 14 *Geo.* 3. *Burr. S. C.* 782. 2 *Bott*, 391. 1 *Nol. P. L.* 513. 3*d ed.* An apprentice bound for three years, without any consideration, to a slater at *Wrexham*, served under the indenture for nine months: then his master died; and he continued a fortnight with the widow, to complete the work unfinished by his master. Then his mistress, having no employment for him, told him that he must not stay with her, and that he was at liberty to go where he thought proper. On his going away, he told his mistress that he was going to his father, who was a slater. There was no particular agreement between his father and his mistress, nor were the indentures delivered up. His father then lived in the parish of *Chirk*, and he continued with him there two or three years. The Court held that his settlement remained at *Wrexham*, for it sufficiently appears that he served forty days as an apprentice in *W.*, and therefore his settlement must remain there. The widow doth not appear to have had any interest; and no administration appears to have been taken out.

But where a pauper bound for three years, served forty days in *W.* and afterwards, on his master's death, being dismissed by his widow, who had not taken out administration, served his father in *C.* two or three years, he is settled in *W.*

Rex v. *Stockland*, *H.* 19 *Geo.* 3. *Doug.* 70. *Cald.* 60. 2 *Bott*, 416. 1 *Nol. P. L.* 509. 3*d ed.* The pauper was bound apprentice by the parish officers of *Stockland* to *John Davis* of that same parish, till twenty-four years of age. He lived with him four years in that parish under the indenture, when his master died. He continued with his master's son, who was his executor, and had proved the will, for about seven years in that parish, when being desirous of living with his uncle in the parish of *Otterton*, to learn the trade of a miller, his uncle and he applied to the executor for his consent, who gave his consent accordingly. The pauper thereupon went to his uncle in the parish of *Otterton*, and continued there with him the whole two years and a half, at the end of the first four months of which time the pauper attained his age of twenty-four years. It was argued on the one hand, that the contract between a master and his apprentice is merely personal, and dies with the master; that by law there can be no valid assignment of an apprenticeship. That an assignment is indeed evidence of the original master's consent to the apprentice's residence with the new master, but here the presumption failed, because the original master did not exist when the pauper was assigned. On the other side it was contended, that if an apprentice resides in a parish by the consent either of his master, or of the executor or administrator of the master, he gains a settlement. That here had been no dissolution of the apprenticeship by the act of

So he may continue to serve under an indenture, by leave of the executor, and will gain a settlement thereby.

Service with consent of executor of original master.

the parties, and that no case went so far as to decide, that an apprenticeship is of course dissolved by the death of the master. That it had only been decided that an apprentice could not be compelled to serve the master's representative. And several cases were cited; but that which was chiefly relied on was the case of *East Bridgeford*, as having gone much farther than this, because there the assignment was by a person who had only the right to the administration, but had not administered. — By Ld. *Mansfield* C. J. Though an apprentice is not strictly assignable, nor transmissible, yet if he continue with the consent of all parties, and his own, it is a continuation of the apprenticeship. The case of *East Bridgeford* is much stronger than this.

(11.) Of Service under an actual Assignment, or Transfer of Indentures.

[*Note.* In the following cases under this division, are several relating to parish apprentices; there, is a subsequent division (12) for parish apprenticeship cases solely; but these being decided upon principles entirely independent of the fact of their being parish bindings, are inserted in the present division.]

Apprentice assigned.

St. Olave's v. *All Hallows*, *T.* 9 *Geo.* 1. 1 *Sess. Ca.* 215. 1 *Nol. P. L.* 509. 3*d ed.* If a master assign over his apprentice, and the apprentice serve in pursuance of that assignment, he thereby gains a settlement; and it differs not whether he serve with one master or another, for he still serves by virtue of the first indenture.

Apprentice assigned to a second master by indorsement on the indenture, gains a settlement by serving him.

St. Petrox v. *Stoke Fleming*, *T.* 19 *Geo.* 2. *Burr. S. C.* 248. 2 *Bott*, 407. 1 *Nol. P. L.* 509. 3*d ed.* *Anne Giles*, the pauper, was bound a parish apprentice to *Rebecca Gregory* of *St. Petrox*, till her age of twenty-one. She served there five years; when the said *Rebecca Gregory*, by indorsement on the indenture, delivered up the said indenture, together with all her right, interest, and term of years then to come and unexpired of the said apprentice, to *Philip Foale* of *Stoke Fleming*: and on the same day, the said *Anne Giles*, being then of the age of fourteen years, did voluntarily bind herself apprentice by indenture to the said *Philip Foale*; and served him under the said indenture at *Stoke Fleming* for several years. The question was, whether a settlement hereby was gained at *Stoke Fleming*? It was objected, that here was no regular assignment of the first indenture to *Philip Foale*, it being only delivered up, but not assigned. And the term was not expired when she bound herself to *Phillip Foale*. By the Court. Though an assignment of an apprentice (except in *London*, by custom) cannot strictly be made; yet as this assignment was with the assent of the mistress, the service under it will be good for the purpose of gaining a settlement; for the service continued under the first binding.

But to enable an apprentice to gain a settlement by serving a second master, the agreement must be proved, and if such proof is by

Rex v. *St. Pauls, Bedford*, *M.* 36 *Geo.* 3. 62. 6 *T. R.* 452. 2 *Bott*, 425. 1 *Nol. P. L.* 509. 3*d ed.* *C. Page* and his family were removed from *St. Paul's, Bedford*, to *Kempston*. On appeal, the sessions quashed the order, and stated the following Case: — The pauper was bound an apprentice for seven years to *W. Robinson* of *Kempston*, cordwainer; he served *Robinson* in *Kempston* near five years, when they removed together to *Biddenham*, where the apprentice con-

tinued with his master near a year, when his master died. About six weeks after, an agreement was entered into between *S. Negus*, executrix of *W. Robinson*, with *J. Robinson*, which was indorsed on the indenture, by which *Negus* assigned over the apprentice to *J. Robinson* for the remainder of the term, and *J. Robinson* agreed to teach the apprentice the same trade, and to provide for him to the end of the term. This agreement was signed by *Negus* and *J. Robinson*, but not stamped. Immediately after the assignment, the pauper went into the service of *J. Robinson* in *Kempston*, and continued there near a year. The indenture being proved, the respondents offered the written agreement in evidence, which the sessions rejected, because it was not stamped; they then offered parol evidence of the verbal agreement between *Negus* and *J. Robinson*, that the pauper should serve the remainder of the term of seven years with *J. Robinson*, and the pauper's consent: this evidence was also rejected. — Ld. *Kenyon* C. J. It has been settled ever since the case of *Rex* v. *St. George, Hanover-square*, that if an apprentice serve a second master forty days with the express consent of the first, he gains a settlement in the parish where that service is performed; the first master has not, indeed, the absolute controul over the apprentice, so as to compel him to go to any part of the kingdom, and serve another master, but if he do serve a second with the consent of the first, it is sufficient; it must be with the consent of the first master, for it has been decided, that his mere *knowledge* of such service will not answer the purpose. The question here is a question on evidence. Whether the executrix of the master did or did not consent to the service with the second master? The sessions were of opinion, that the instrument which was produced to prove that consent, could not be received in evidence, because it was not stamped, and therefore it becomes necessary to consider how far stat. 23 *Geo.* 3. *c.* 58. affects this case. By that act all agreements are to be stamped, except they fall within the exceptions in the 4th clause. It is said that this person comes within some one of them; but he was not a *servant;* he had acquired another specific denomination, well known in the law, an *apprentice.* The exception clearly refers to cases where there is a *hiring;* but that was not the present case: "hiring" is not applicable with any propriety to the case of an apprentice. Apprentices and servants are characters perfectly distinct; the one receives instruction, the other a stipulated price for his labour. I think, therefore, that we should be doing violence to this act to determine, that an apprentice comes within the terms in this clause of exception, and consequently the sessions did right to reject this instrument. And when an attempt was made to give parol evidence of the agreement, they also did right in refusing to receive it, because the agreement was reduced to writing. Without canvassing the other point, I am satisfied that the sessions were warranted in rejecting the agreement, and if so, there was no evidence to shew any consent that the apprentice served the second master with the consent of the executrix of the first. — *Grose* and *Laurence* Js. of the same opinion. Order of sessions confirmed.

Actual asignment of indentures.

an indorsement on the indenture or other writing, the same must be stamped, or cannot be received in evidence, nor can parol evidence be received, if the agreement was reduced to writing.

Hiring not applicable to an apprentice.

And see *Rex* v. *East Knoyle*, &c. *post*, § IX. (13.)

Rex v. *Clapham*, *E.* 20 *Geo.* 2. *Burr. S. C.* 266. 2 *Bott*,

Apprentice and indenture deli-

R. v. Clapham.

vered to a second master, and by him placed with a third master, gains a settlement.

408. 1 *Nol. P. L.* 500. 507. 510. 3*d ed.* *Michael Wilson*, the pauper, was bound a parish apprentice to one *Thomas Jackson*, of *Austwick*, tenant to the reverend Mr. *Jackson* of *Clapham*, who had covenanted to indemnify his tenant against all parish charges. *Thomas Jackson* carried him to his landlord together with the indenture; who accepted, received, and provided for him. He desired the mother to provide for the boy; who did so, for three years, in *Austwick;* and the reverend Mr. *Jackson* paid her 20*s.* a-year. Then he lived with him in *Clapham* eight weeks, and then ran away to his mother, and remained a quarter of a year with her in *Austwick*, and the reverend Mr. *Jackson* consented to his being there. Then the pauper was placed with his brother, a mason in *Austwick*, as an apprentice, by the reverend Mr. *Jackson*, who gave him a new suit of clothes. And he served his brother as an apprentice, a twelvemonth or two, in *Austwick;* who took him as an apprentice, and quitted the reverend Mr. *Jackson* of him. But the representatives of the first master (who was then dead), knew nothing of this, or even assented to it; nor any thing of his living with his mother. — By *Lee* C. J. and the Court: The statute only requires a binding by indenture, and gives a settlement where the last forty days are served. Here is a binding by indenture; and the first master delivers over the apprentice and indenture to his landlord, who receives him. This, therefore, must be looked upon as receiving him under the terms of the indenture. If there had been no inhabitancy elsewhere, after the boy's living eight weeks with the reverend Mr. *Jackson* at *Clapham*, the settlement had been there. But a settlement is fixed at *Austwick*, by the boy's living there a quarter of a year, with the consent of his master, and after that, by his service to the mason. There is no ground for the distinction, that a second master cannot assign to a third, that is, so far as to gain a settlement by the service under it. This was not a new binding to the mason, for a new contract could not be made whilst the former subsisted; but the service with the mason was a service under the first binding.

Apprentice assigned to a second master, and hired to a third master, with the second master's consent, gains a settlement by serving the third master.

Rex v. *Tavistock*, *E.* 7 *Geo.* 3. *Burr. S. C.* 578. 1 *Blac. Rep.* 635. 2 *Bott*, 412. 1 *Nol. P. L.* 507, 508. 516. 3*d ed.* *Rosamond Cook*, a poor boy, was bound a parish apprentice to *Richard Rundle* at *Lemerton*, with whom he lived there several years. Then *Rundle* transferred him by assignment to *John Prout*, of *Milton Abbott*, with whom he lived until he was twenty years and a-half old, at which time he offered his service to *Thomas Mason*, of *Kelly*. *Mason* apprehending he was an apprentice to *Prout*, sent him to know whether it was with his consent that *Cook* should live with him. To which *Prout* answered, with all his heart; he might live with *Mason* or any body else, provided he performed his agreement with him, which was, to pay one guinea a-year during the remainder of his apprenticeship. Accordingly he lived with *Mason* in *Kelly*, for a year and upwards. The sessions being of opinion that he gained no settlement thereby, vacated the order of the two justices which removed the pauper from *Tavistock* to *Kelly*. It was moved to quash the order of sessions; and urged, that being a parish apprentice, and an infant, he could not be transferred without the consent of the justices, and himself could give no consent; and if he

could, it would not follow that he could live in *Kelly* as an apprentice, without the privity of the first master *Rundle*, and there is no consent at all from him either express or implied.— Ld. *Mansfield* C. J. said: The only question is, whether *Prout* consented; and it is clear he did consent: and his consent included that of the first master. And the order of sessions was quashed.

The consent of the third master includes that of the first.

Rex v. *Christowe*, *E.* 49 *Geo.* 3. 11 *East*, 95. *Bott*, *Cont.* 8. 1 *Nol. L. P.* 520, 521. 3*d ed.* *Elizabeth Pain* was removed from *Moretonhamstead* to *Christowe*, in the county of *Devon*. On appeal, the respondents proved a settlement by birth in *Christowe*. The appellants then proved that at the age of seven years the pauper was bound an apprentice by the parish of *Christowe* to *William Ponsford*, with whom she lived there till she was eleven years old. They then produced a written paper, purporting to be an assignment of the pauper by *Ponsford* to *John Smith* then of the same parish, with whom she lived in *C.* for some time, and afterwards in the parish of *H.* for several years, till her apprenticeship expired. The written paper was legally stamped, and was dated 23d *January*, 1797. And was in fact a binding of *Elizabeth Pain* with her consent and approbation by *Ponsford* to *Smith*, as an apprentice, till she attained the full age of twenty-one years. The consideration was 5*l.* 5*s.*; and the indenture was signed and sealed by all three.—The sessions thought that this being (as was allowed by the appellants) void as an assignment, it could not be received as evidence of the first master's consent to the pauper's living with the second master, and confirmed the order. On argument in the K. B. it was insisted that this was evidence of consent, and the cases of *Rex* v. *St. George's*, *Hanover-Square*, *Rex* v. *Tavistock*, *Rex* v. *St. Petrox*, *Rex* v. *Clapham*, and *Caistor* v. *Aicles*, were cited as cases in which parish apprentices assigned in fact, but without proper authority, nevertheless gained settlements by serving the masters to whom they were so assigned, as serving them by the consent of the original masters. And that the same principle was acted upon in the case of *Rex* v. *East Bridgeford*.—*Per* Lord *Ellenborough* C. J. This instrument purports to be a new and original binding of an apprentice by indenture by *Ponsford* to *Smith;* it does not recognise or refer to the original indenture of apprenticeship as being an assignment of the apprentice under that indenture; nor does *Ponsford* thereby assume to have any right to assent to the apprentice serving another master under any former indenture, but only to bind her *de novo*. How then can I say that this was a consent on his part, that she should serve *Smith as a continuation* of the relation of apprenticeship which she had contracted before with him *Ponsford*. This would be to intend a consent contrary to what appears upon the face of the instrument to have been the intention of the contracting parties. I should be sorry to overturn the decided cases, but it appears to me that this is distinguishable from them; and that there is no case where the first master affected to bind his apprentice to another *de novo* by an original indenture, in which his consent to a service as under the former binding has been inferred: and therefore, without disturbing those cases, but leaving them as we find them, I do

A parish apprentice being bound by her original master to another master by a new indenture of apprenticeship, without reference to or recognition of the original indenture, which still subsisted in law, does not gain a settlement by serving her new master as upon a constructive service of the original master under the first indenture; this being only evidence of the first master's consent to the service with the second, under a new contract of apprenticeship.

The consent of the third master includes that of the first.

not think that this instrument proved the consent of *Ponsford* to the service with *Smith*, under the original binding. — *Le Blanc* J. said, That the consent must be to a service with the new master, under a recognition of the original binding. — Orders confirmed.

Where a parish apprentice was assigned by his original master to *J. S.* by an instrument in writing, but there was no consent of two magistrates: Held, that this was not a lawful assignment under 32 G. 3. c. 57. § 7., but it was sufficient to shew the consent of the first master, to the service to *J. S.* and consequently, such service was good as a service under the original indenture, and conferred a settlement.

Rex v. *Inhab. of Barleston, E.* 3 *Geo.* 4. 5 *B. & A.* 780. Removal from *Heather* to *Barleston*, both in *Leicestershire*. Order confirmed by the sessions, subject, &c. Case:—In support of the order, a settlement by apprenticeship under a parish indenture to *John Greasley*, in the appellant parish, was proved. The appellants, in order to shew a subsequent settlement in the parish of *St. Mary*, in *Leicester*, gave in evidence a paper purporting to be an assignment of the pauper, in *February*, 1812, by the said *John Greasley* to *Thomas Dalby* of that parish, and proved a residence of more than 40 days in the same parish under that assignment. There was a premium of 5*l*. paid by *Greasley* to the new master; but it was the sum which he, *Greasley*, had received with the pauper, on the original binding from *Heather*. The instrument by which the assignment was made, was in writing, and was executed by *Greasley*, *Dalby*, and the pauper. The instrument, after reciting that the apprentice had about eight years of his term unexpired, as appeared by his indenture; stated, that for divers good considerations, *Greasley* did fully and absolutely give, grant, assign, and set over unto *Thomas Dalby* of the borough of *Leicester*, framework-knitter, all such right, title, duty, term of years to come, service and demand whatsoever, which the said *John Greasley* had in or to *Samuel Blockley*, on which he might or ought to have in him by virtue of the said indenture. And the said *John Greasley* covenanted with the said *Thomas Dalby*, that he, *Samuel Blockley*, (the pauper) should, notwithstanding any thing to be done by *Greasley* during the said term of years, well and truly serve the said *Thomas Dalby* as his master, &c. Provided, that the said *Thomas Dalby* shall well entreat and use him, and learn him the craft, mystery, and occupation of a framework-knitter; and should also allow him sufficient meat, &c., which the said *Thomas Dalby* agreed to do in consideration of the services of the said apprentice; and also, the sum of 5*l*. agreed to be paid by *Greasley* to *Dalby*, being the said sum of money which he, the said *John Greasley*, received with the said apprentice from the churchwardens and overseers of *Heather*, on their putting and placing him, the said *Samuel Blockley*, apprentice to the said *John Greasley*. It was objected by the respondents, that this assignment was not made under the 32 *Geo.* 3. *c.* 57. with the consent of two magistrates in writing; and therefore, was not an instrument under which a settlement could be gained. The appellants contended, that it was a valid instrument to confer a settlement, and cited the 56 *Geo.* 3. *c.* 139. § 9. which passed subsequently to the assignment. The case having been argued, *Cur. adv. vult.*, and afterwards the judgment of the Court was delivered by *Abbott* C. J. We are of opinion that the pauper gained a settlement in the borough of *Leicester*, and consequently, that the rule must be made absolute for quashing the order of removal, and the order of sessions confirming the same. The assignment of the apprentice and the service to his new master, were prior to the prohibitory statute 56 *Geo.* 3. *c.* 139., and, therefore, are not affected

by it. The prior statute 32 *Geo.* 3. *c.* 57. § 7. is not a prohibitory but an enabling statute. Before that statute, a master could not discharge himself from the obligation to maintain a parish apprentice, by assigning him to another person, nor were the apprentice and the new master subject to the ordinary jurisdiction of the justices, with respect to masters and parish apprentices. This appears by the preamble to the section, and then the act proceeds with certain enactments, whereby if the terms are complied with, these inconveniences are remedied. If the terms are not complied with (and in the present instance they were not) the case is not within that statute; but it is to be considered, with regard to the law, as it stood before that act was passed. And so considered, although the assignment may be for many purposes inoperative, yet it manifests a consent of the first master to a service with the second, and renders that service a service under the original binding. This is established by the cases of *Rex* v. *The Inhab. of East Bridgeford, Burr. S. C.* 133. 2 *Bott*, 407. *S. C.* and *Rex* v. *The Inhab. of St. Petrox, Ibid.* 248. In the first of those cases, the widow of the first master, who was of *Orston*, without taking out administration to her husband, assigned the apprentice to one *George* at *Staunton*, and *George*, afterwards, by parol, assigned him to one *Baggaley*, at *East Bridgeford;* and it was held, that he gained a settlement by the service at *East Bridgeford, by reason of the consent.* In the last of those cases the service, under the original binding, was in *St. Petrox;* and the first mistress indorsed the indenture, and delivered it up, together with the interest in the apprentice, to one *Foale*, of *Stoke Fleming*, and the apprentice, by a new indenture, to which the mistress was not a party, voluntarily bound herself to *Foale*, and served him at *Stoke Fleming;* and the Court held, that though an assignment of an apprentice (except by custom in *London*) cannot strictly be made; yet, as this assignment was with the assent of the mistress, the service under it would be good, for the purpose of conferring a settlement; *for the servitude continued under the first binding.* And these cases, and some others determined upon the same principle, appear to have been recognised by the Court, in the case of *The King* v. *The Inhabitants of Christowe*, 11 *East*, 95., in which case the first master had not assigned the apprentice, but had taken upon himself to bind her out anew, with her consent, to another person, by a new indenture of apprenticeship; and the Court, on that account, thought that the service to the second master could not be considered as a service under the original indenture. Order of sessions quashed.

The consent of the third master includes that of the first.

Rex v. *Barnsley*, *E.* 53 *Geo.* 3. 1 *M.* & *S.* 377. *Bott, Cont.* 39. On appeal against an order for the removal of *Robert Gill*, his wife, and children, from the township of *Barnsley* to the township of *Killinghall*, both in the west riding of the county of *York*, the court of quarter sessions discharged the order, subject, &c. — *John Gill*, the father of the pauper, was bound apprentice by indenture, dated the 1st day of *December*, 1764, to *Thomas Harrison*, in the township of *Clint*, for seven years, and served five years, until his master died, when, in consideration of three guineas paid by *William Bradfield*, he was assigned by *Elizabeth Harrison*, (widow of the said *Thomas Harrison*) by an unstamped indorsement on the indenture, for

Service under an unstamped assignment by a widow, not stated to be the executrix or administratix of her husband.

R. v. Barnsley.

the remainder of his term in the words following: "*April* 14th, 1769. Be it remembered, that I, *Elizabeth Harrison*, of *Clint*, in the parish of *Ripley*, do acquit and assign over my apprentice, *John Gill*, for all the remainder of his said apprenticeship, unto *William Bradfield* the younger of *Killinghall*. (Signed) *Elizabeth Harrison*. *William Bradfield*. Witnesses, *William Hays*. *George Clarkson*." No evidence was offered to shew that *Elizabeth Harrison* was either the executrix or the administratix of her husband *Thomas Harrison*. *John Gill* went to and served *William Bradfield*, as his apprentice, in *Killinghall*, till the expiration of his indenture. *John Gill*'s family for the last seven years has been regularly relieved by having his rent paid by the township of *Killinghall*, during which time he and his family were residing in another parish. The pauper, *Robert Gill*, has not done any act to gain a settlement for himself.— After argument, Ld. *Ellenborough* C. J. said, The only doubt is, whether where the sessions have drawn a conclusion, palpably erroneous, upon two points, we should send the case down again, or in ease of the parties, draw the irresistible conclusion ourselves. The relief given by the parish of *Killinghall* to the family of *J. G.* for seven years, is evidence of such preponderating weight, that I should think any judge would direct a jury to find upon such evidence, (supposing the question legally to come before them,) that *G.* was by some means or other a settled inhabitant of that parish. It does not indeed amount to an estoppel; but it is cogent evidence against the parish. The sessions also ought to have drawn a different conclusion on the other point. The assignment (which, it is admitted, was not at the time required to be stamped), is in its form an assignment by the widow, "as my apprentice," and at this distance of time, we will presume, if necessary, that she was lawful executrix: or even if she were executrix of her own wrong, still according to the case of the *King* v. *East Bridgeford*, (*ante*, p. 514.) if the pauper lived forty days under that assignment, we should hold him settled in the parish: and one case is enough on such a subject.—Order of sessions quashed.

Relief to pauper residing in another parish during seven years.

An apprentice, bound for seven years, serving in the master's house part of his time, and then living with his mother by leave of the master, but working for whom he pleased, gained no settlement in the mother's parish. See *Rex* v. *Inman*, *&c.* Vol. I. § xiv. *tit.* Apprentice, p. 184.

(12.) Of Service, the Indentures being delivered up, or avoided by other Acts of the Parties.

ndentures be-ıg exchanged ɛtween the ıaster and ap-rentice, the ɔprentice can-ot afterwards ıin a settle-ıent under ıem by serving ıother master ith the know-dge of the ɪst.

Rex v. *St. Mary Kallendar*, *T.* 21 & 22 *Geo.* 2. *Burr. S. C.* 274. 2 *Bott*, 395. 1 *Nol. P. L.* 499. 501. 511. 3*d edit.* *John Miles*, the pauper, was bound by indenture an apprentice for seven years, to *John Gregory*, of *St. Michael's*; and under that indenture lived with the said *John Gregory*, and served in *St. Michael's* for five years; and at the end of five years left his said master; and the indentures were exchanged between the master and the apprentice's father, by consent of the apprentice. About one year afterwards, the father of the said *John Miles* contracted with *William Stockdale* of *Twyford* for binding the said *John Miles* apprentice to the said *William Stockdale* for four

years; and in consequence of that agreement the said *John Miles* went to the said *William Stockdale* on trial, and lived with him in *Twyford* for one year and three quarters: but no indenture was executed, nor any other agreement made. And while the said *John Miles* lived with the said *William Stockdale*, *John Gregory* his former master, lived within four miles of *Twyford*, and knew of his being in the service of the said *William Stockdale*. But no other proof was made, that the said *John Gregory* consented or agreed to the contract made between the said *John Miles*'s father and the said *William Stockdale*. The question was, whether, under the circumstances of this case, any settlement was gained at *Twyford*? — By *Lee* C. J. and the Court: There can be no ground to consider this as a settlement at *Twyford*, but upon supposing the first indentures to have subsisted, and that the service at *Twyford* was under them. But that could not be; because the exchange of the indentures certainly amounted, either in law or in equity (and they are the same thing in this case), to a cancelling of them, and a determination of the apprenticeship under them. Besides, there is no consent of the original master, but the contrary is apparent; his knowledge of the fact doth not at all imply his consent to the transaction. The apprentice's living at *Twyford* was not under, but contrary to the first indenture; it was in consequence of a fresh agreement, and for a new term.

R. v. St. Mary Kallendar.

Rex v. *Titchfield*, *M.* 4 *Geo.* 3. *Burr. S. C.* 511. 2 *Bott*, 397. 1 *Nol. P. L.* 501. 526. *3d ed.* *P. Warfield* bound himself apprentice by indenture to *W. F.*, and inhabited with his master above forty days at *M.*, but falling sick, he on account thereof, and with the consent of his master, went to his father in the parish of *Bewley*, and there continued forty days, and was sick at that time, and to the time the order was made. On his going to his father the indentures were mutually given up, but not cancelled. The Court held that an inhabitancy by reason of sickness shall not gain a settlement, and also that there is no difference between the indentures being *given up*, and being *cancelled*. They amount to the same thing.

Exchanging the indentures is a virtual cancelling.

Rex v. *Buckington*, *E.* 10 *Geo.* 1. 2 *Bott*, 395. 1 *Nol. P. L.* 498. *3d ed.* *Richard Allen* was bound apprentice at twelve years of age to *John Cary* of *Buckington*, where he served and inhabited with his master for two years. Soon afterwards *J. C.* became a bankrupt, upon which *Allen*, without the consent or direction of *Cary*, hired himself as a servant for a year to *Joshua Glover* of *Shepton Bechamp*, and served him accordingly in the said parish for two years. During this service in *S. Bechamp*, the term of his apprenticeship expired, and *Cary* delivered up the indenture to *Glover*. And the Court were of opinion, that *Allen* gained no settlement in *Shepton Bechamp*, for that the bankruptcy of the master did not discharge the apprentice from his indentures.

Bankruptcy of the master does not discharge the apprentice from his indentures.

Rex v. *Chipping Warden*, *H.* 39 *Geo.* 3. 8 *T. R.* 108. 2 *Bott*, 404. 1 *Nol. P.L.* 447. 503. *3d ed.* *R. Lymath*, *&c.* were removed from *Chipping Warden* in *Northamptonshire*, to *Great Robright* in *Oxfordshire*, and the sessions quashed the order of removal. *R. Lymath* was born in *Brailes*; in 1776 he was bound apprentice by indenture to *W. Goodwin*, blacksmith, of *G. R.*, for five years: he served *G.* at *R.* for two and a half years under the

Apprentice agreeing with his master for his discharge, and quitting his master, but leaving the indentures till

What shall be a discharge of indentures.

the money agreed for is paid, the indentures are not thereby discharged, and service under a second master, by the express consent of the first, is a service under the indentures.

said indentures, when his master left off business, and went to reside in the parish of *Marston*. At that time the pauper agreed verbally with his master to give him 7*l.* for the rest of his time, his master not wishing to turn him over to any one, and it was agreed that the master should keep the indentures till the 7*l.* was paid, which was to be from time to time as the pauper could earn it, and was convenient to him to pay it. The pauper considered himself at liberty to work with any master he pleased, and did work with different masters till the harvest of 1779, when, at the request of his former master *Goodwin*, he came to serve him as a labourer for about a month, and received his wages according to the rate usually given to labourers in harvest, the amount being deducted from the 7*l.* which the pauper had agreed to pay *G.* *Goodwin* afterwards recommended the pauper to serve one *Cherry*, a blacksmith at *Marston*, into whose service he went with the knowledge of *G.*, and continued there about twelve months. The indentures were not delivered up till five or six years after the apprenticeship had expired. — Ld. *Kenyon* C. J.

Axioms.

It is clear that in general an apprentice is not capable of contracting the relation of servant to any other master until the end of the term for which he was bound; but it is equally clear, that if the master and apprentice put an end to the apprenticeship by mutual consent, it is the same as if the indentures had never been executed, and the latter may gain a settlement by hiring and service with any other master before the expiration of the term for which he was bound; then there is a third case, that where the apprentice leaves his master and enters into the service of another, if the indentures still subsist, he is not *sui juris*, but is incapable of gaining a settlement by serving another master, unless he serve with the consent of his former master, and in such case he gains a settlement, not as a hired servant, but as an apprentice. These are axioms in this branch of settlement law, and cannot now be called in question. Now what are the facts of this case? The pauper was bound an apprentice to a master residing in *Great Robright*, who two years afterwards discontinued business: at this time the parties did not put an end to the apprenticeship: but on the contrary, the apprentice agreed to pay 7*l.* to the master, who was to keep the indentures until that sum was paid, *the master all this time keeping a controul over the apprentice*; the pauper then went into different situations, and among the rest he served a person of the name of *Cherry*, into whose service he went at the recommendation and with the knowledge of his first master, the indentures still continuing in force; then according to all the authorities this must be deemed a service under the indentures. My opinion in this case does not proceed on the ground that the pauper served *Cherry* a year as a hired servant, but that he served him under the indentures of apprenticeship with the consent of his original master. Order of sessions affirmed.

Where the mother of an apprentice, whose time had not expired, applied to his master to give

Rex v. *Skeffington*, *H.* 60 *Geo.* 3. and 1 *Geo.* 4. 3 *B.& A.* 382. Removal from the parish of *Halstead* to the parish of *Skeffington*, both in the county of *Leicester*. The sessions, on appeal, confirmed the order, subject to the opinion of the Court of K. B. on the following Case: The respondents proved a hiring and service in *Skeffington* by the pauper *Thomas Harrison*, from *Martinmas*,

1812, to the following *Martinmas*. The appellants then gave in evidence an indenture of apprenticeship, dated 1805, by which the pauper bound himself apprentice to *William Dudgeon*, of the parish of *St. Mary*, *Leicester*, for the term of ten years. A premium of 12*l.* was stated in the indenture to have been paid to *Dudgeon* with him by the churchwardens and overseers of the parish of *Tugby*, which was also stated to have been paid by them out of a charitable donation fund belonging to that parish. No evidence, however, was given of the premium having been paid out of a charitable fund, except the above statement on the face of the deed, and the declaration of the parish officers at the time they paid it, that it was charity money. The deed was objected to as not having any stamp, but the objection was overruled. The pauper served under the indenture for four years in the parish of *St. Mary*, *Leicester*, when his mother applied to *Dudgeon* to give him up to her, she saying she had procured another master. The master said she might have him and welcome. They all agreed to part, and the boy went away with his mother. The indenture remained in the hands of the overseers of *Tugby*, and was never delivered either to the boy or his mother, nor applied for by any of the parties; but the master said he would have given it up if it had been at the time in his possession. The overseers of *Tugby* afterwards applied to *Dudgeon* to take the boy again; but he said he would not, adding unless the magistrates make me take him again, I have done with him; and he never heard any thing more on the subject. — After argument, *Abbott* C. J. said, if it had been shewn in the present case, that this apprenticeship had ever been well constituted, I should have been of opinion, upon the authority of *Rex* v. *Bow* (*ante*, p.513.), which has been cited here, that the agreement between the parties in this case was not sufficient to put an end to the indenture. I think, also, that the fund out of which the premium is said to have been paid, was a public charity within the meaning of the exception in the stamp-act. But I think that there is no sufficient evidence in this case to shew that the premium was in fact paid out of such a fund. It is stated in the case, as a fact proved by the master, that a premium of 12*l.* was paid with the apprentice. That being so, it would be very dangerous to say that the declaration of the parish officers should be admitted to prove the nature of the fund out of which it was paid, more especially when those persons might have been called to prove the fact. The case is not precisely the same as if a declaration of the parish officers had been offered as the only proof of payment. In that case the whole declaration would have been receivable. But here the fact of payment was itself proved. Upon that ground I am of opinion that the indenture ought not to have been received in evidence; and, therefore, that the sessions had nothing before them to shew that the pauper was not *sui juris* at the time when he served for a year in *Skeffington*. The order of sessions must, however, be confirmed, because their ultimate decision, although founded on wrong grounds, was correct. *Bayley* and *Holroyd* Js. concurred. Order of sessions confirmed.

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him up to her, and the master having consented to it, and al having agreed to part, the apprentice went away; but the indenture which was in the hands of a third person, was never applied for nor given up: Th Court of K. B. held, that the apprenticeship was not put an end to by this agreement, although the master said tha he would have given up the indenture if he had had it in his possession at the time, and afterwards refused to take back the apprentice.

Rex v. *Weddington*, *E.* 14 *Geo.* 3. *Burr. S. C.* 766. 2 *Bott*, 398. 1 *Nol. P. L.* 447. 499, 500. 3*d ed.* The pauper, *Thomas*

Apprentice bound by his

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father may be discharged, although under age, by consent of all the parties to the indentures.

Lawrence, was born in the parish of *Chilvers Cotton*, where his father then resided under a certificate from the parish of *Weddington*. When the pauper was of the age of eight years and a half he bound himself apprentice by indenture, with his father's consent, (who was party to the indenture,) to *William Meigh* of the said parish of *Chilvers Cotton* for seven years, and served him there one year and a half, and then the indenture was destroyed, by consent of the master, the father and the apprentice. The pauper, within half a year afterwards, bound himself apprentice by indenture, with his father's consent, to *Thomas Maydlin* of the parish of *Bulkington*, for seven years, and served him in the said parish of *Bulkington* for four years, and then this indenture was destroyed, by consent of the said *Thomas Maydlin* the master, the father and the apprentice. The pauper after this returned into the said parish of *Chilvers Cotton*, and bound himself apprentice to one *Shaw* in the said parish of *Chilvers Cotton* for two years, and served him there the said two years. In about three years next after the expiration of the apprenticeship to *Shaw*, he hired himself for a year to *Lawrence Smith* of the said parish of *Chilvers Cotton*, and duly served him in the said parish for a year under the said hiring. And having become actually chargeable to the said parish of *Chilvers Cotton*, he was removed to the parish of *Weddington*, which gave the certificate.— By Ld. *Mansfield* C. J. The single question is, Whether the indenture of the apprenticeship in *Bulkington* was void or not, there having been a former indenture, but such former indenture having been cancelled by agreement between the master, and the father, and the apprentice? The case of *Austrey* was determined on particular circumstances. The question was, Whether the parish officers, who bound out the apprentice under a special authority, ought not to have been consulted about discharging him, and to have given their consent to it? The whole policy of the 43 *Eliz.* might be defeated, if the master and parish infant apprentice could, by their joint consent alone, without the consent of the parish officers, discharge such a contract, and set the apprentice free from it. That case, therefore, is not applicable to the present. Here, the original contract was only between the father, the master, and the apprentice; and all of them consent to the discharge. An infant may make his condition better, though he cannot make it worse. The reason why an infant may bind himself apprentice is, because it is for his benefit. If he was discharged of the former indenture, he was at liberty to execute another.

If an apprentice enter into the king's service, it does not avoid the indentures. Query; Whether an infant may avoid the indentures at his will?

Rex v. *Hindringham*, *H.* 36 *Geo.*3. 6 *T.R.* 557. 2 *Bott*, 402. 1 *Nol. P.L.* 499. 505. 3*d ed.* *H. Beck* and his wife and family were removed from *Hindringham* to *Blakeney*; the sessions quashed the order, and stated the following Case:—The pauper, in *March*, 1780, being aged 17, bound himself an apprentice to *F. Wells*, then of *Blakeney*, mariner, for four years, and resided there under his indentures above forty days. When he had been an apprentice about thirteen or fourteen months, he went on shore at *Burlington Bay*, and meeting with a press-gang, entered as a sailor, with the consent of his master, but the indentures were neither delivered up nor cancelled during the apprenticeship. He continued in the king's service about two years, and was then

discharged, when he went to his father's house at *Bale* in *Norfolk*, and continued there for some weeks. At *Whitsuntide* 1783, he hired himself to *A. Wilson* of *Hindringham*, till the *Michaelmas* following, when he hired himself again to the said *Wilson* for a year, which he also served in *H.*, and on the second of *March* in that year, the apprenticeship expired. — By Ld. *Kenyon* C. J. There is no ground for saying that the apprentice did any act to put an end to the indentures when he entered into the king's service. But I desire it may not be taken for granted that an infant who binds himself apprentice, a contract so notoriously for his own benefit, may put an end to that contract at any time during his minority. I enter my protest against discussing that question now: it will be sufficient to determine it when it necessarily arises. (See *Ashcroft* v. *Bertles*, 2 *Bott*, 403.) In this case the pauper bound himself to *Wells* by indenture, under which he served in *Blakeney* more than forty days; afterwards, when he was pressed into the king's service, he agreed to go as a volunteer with the consent of his master, evidently implying that he did not then put an end to the indentures. It appears to me that the indentures still continued in force, and consequently that the pauper could not enter into a legal contract of hiring with *Wilson* at the time he engaged with him, he not being at that time *sui juris*. Order of sessions quashed.

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Rex v. *Mountsorrel*, *H.* 55 *Geo.* 3. 3 *M. & S.* 497. Removal from *Burton Lazars* to *Mountsorrel*, in *Leicestershire:* the sessions confirmed the order, subject, &c. Case: — The pauper, *Henry Henfrey*, in 1807, being under age, bound himself apprentice by indenture for seven years, to a person residing in *Mountsorrel*, the pauper and the master being the only parties to the indenture. When the pauper had served about a year, the master left his house and ran away for debt; in consequence of which the pauper applied to him by letter to give up the indenture, and with the master's consent the indenture was given up to the pauper by the person who had the custody of it; the term of seven years not having then expired, and the pauper being still under age. The consent of the pauper's mother, who was his only surviving parent, was not asked at the time of making the indenture, or when it was given up. The pauper after the indenture was given up, and during the term for which the indenture was made, and while he was under age, hired himself as a yearly servant, and served the year in *Burton Lazars*. The sessions were of opinion that the apprenticeship still continued, and that the pauper was not competent to hire himself, and therefore confirmed the order. — After hearing counsel in support of the order of sessions, Ld. *Ellenborough* C. J. said, Is not this a case in which it was clearly for the benefit of both parties that the indenture should be put an end to? The master had run away and was no longer in a situation to afford instruction or maintenance to his apprentice. Therefore if the indenture had continued, the consequence must have been that the apprentice would have remained in a state of ignorance and starvation. If that were a state for the benefit of the infant there would be something in the argument. But as it is, the parties have done that for themselves which the magistrates, upon application to them, would have ordered to be done; they have discharged themselves of

Where an infant bound himself apprentice for seven years by indenture, to which indenture he and his master were the only parties, and after serving some time, in consequence of the master's running away and leaving him, procured the indenture to be given up to him with the master's consent, and afterwards, during the seven years, hired himself as a yearly servant and served a year: Held, that he acquired a settlement by such hiring and service, for it was for the infant's benefit under the circumstances that he and his master should be at liberty to

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put an end to the indenture.

the indenture which was burdensome to both parties. Under these circumstances I am of opinion that it was competent to them to discharge themselves of each other, since the continuance of the contract would certainly have been of no benefit to the master, and as certainly would have been prejudicial to the apprentice. The benefit of the infant is to be regarded, and in looking to that one cannot but see that idleness, and the probability of extreme indigence, were the necessary consequences of continuing the indenture, from which the magistrates would have interposed to relieve him. I therefore think that we do not indulge any mischievous discretion in the infant, when we permit him to redeem himself from such a probable state of indigence and idleness. Then if this be so, the pauper was no longer precluded from entering into another service than while his indenture continued. — *Le Blanc* J. In *Rex* v. *Hindringham* the master and apprentice did not consent to the indentures being delivered up, or cancelled. — *Bayley* J. I consider the case of *Rex* v. *Hindringham* as having proceeded upon the ground that it was for the infant's benefit that the indenture should continue. Here we are in a case, where it was notoriously to the prejudice of the infant that the indenture should continue; therefore I think it was in the power of the master and infant together, by vacating the indenture, to dissolve the contract. — Order of sessions quashed.

Of delivering up Parish Indentures. (a)

Indenture being delivered up by the first master to the apprentice's father, and at the same time the master consenting to the apprentice serving a second master as turned over to him, such service gains a settlement.

Rex v. *Langham*, *M.* 22 *Geo.* 3. *Cald.* 126. 2 *Bott*, 399. 1 *Nol. P.L.* 498. 500. 510. *3d ed.* Two justices removed *William Ellingworth* from the hamlet of *Deanshold* in the parish of *Oakham*, to the parish of *Langham*; the sessions confirmed the order, and stated, That the pauper, *William Ellingworth*, was bound an apprentice by the parish officers of *Deanshold* to *Benjamin Stimsou* of *Langham*, weaver, to serve till the age of twenty-four years: under which indenture he served upwards of four years, when *Stimson* his master failed, and having no longer employment for him, told his said apprentice he might go to his father *Johu Ellingworth* at *Oakham*. Upon the apprentice's coming home, his father applied to one *Beecroft* of the said *Deanshold*, weaver, to take the said apprentice for the remainder of the term; the father of the apprentice then went to *Stimson*, who was at home under confinement, and told his wife that he had got a new master for his son; whereupon *Stimson*'s wife went up to her husband's chamber, and informed him that the father of the apprentice was come, and said he had got a new master for his son, and desired the indentures might be given up; upon which *Stimson* gave the indenture to his wife, who delivered it up to the apprentice's father; the said *Stimson* having first made crosses upon it, as a token that he had resigned up the indenture and apprentice: the apprentice was under age. Soon after *Beecroft* went to *Stimson*, to ask him whether he was willing to resign up his apprentice, and to turn him over, as he was going to take him if he (*Stimson*)

(a) For the statutes relating to parish apprentices, see tit. Apprentices, Vol. I.

was willing, and his father would clothe him: *Beecroft* further said (if things came about) he hoped he (*Stimson*) would not fetch him again; to which *Stimson* replied he never would. *Beecroft* then said there was no occasion for a deal of trouble in *turning him over*, if he (*Stimson*) would be honest; and upon this, *Stimson* assured him he would never fetch his apprentice away; and *Beecroft* then declared, that if we have an agreement drawn to our satisfaction, it will be better than having so much trouble about it, and immediately went away satisfied that he might keep the apprentice *as a turnover*. The apprentice stayed with *Beecroft* three years and a half by virtue of the above transaction, and an agreement was entered into between the father of the apprentice and *Beecroft*, in the presence of the apprentice, but he was no party to it, and the parish officers of *Deanshold* were perfect strangers to it: *Beecroft* kept the agreement and the original indenture. — By Ld. *Mansfield* C. J. and the Court: There is no difficulty in this case; the indenture continues in force; and the only question is, whether the service of the second was with the consent of the first master? for if so, it is a service under the indenture: of this there can be no doubt, for he consents expressly; he cancels the indenture, and directs it to be delivered to the father of the infant apprentice, who came to him for the purpose of this assignment, and he undertakes to the second master that he would not reclaim him. — Both orders quashed.

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R. v. Langham.

Rex v. *Offerton*, *E.* 15 *Geo.* 3. *Burr. S. C.* 802. 2 *Bott*, 414. 1 *Nol. P.L.* 519. 3*d edit.* The pauper, when twelve years of age, was by indenture bound an apprentice by the churchwardens and overseers for seven years. The pauper was a party to the indenture; and it was allowed, pursuant to the statute. Nearly six years after, the pauper and his master entered into the following agreement: — That the pauper, upon paying his master 12*d.* a week, and providing for himself, should be at liberty to work for his own benefit during the remainder of his apprenticeship term; and the master should find him a loom for the remainder of his apprenticeship; and the master to receive the 12*d.* a week as a satisfaction for his service during the remainder of his apprenticeship. The pauper was of the age of eighteen at the time of making the agreement. Neither the churchwardens nor overseers were privy to it; nor was the indenture cancelled or delivered up. The pauper married and removed to *Offerton*, and there worked during the last forty days before the justices removed him from thence, with the same tradesman who employed his master; and the master provided him a loom, and knew with whom he was working; but did not give any particular direction or consent. The pauper received the profits to his own use. The master demanded of him the 12*d.* a week; but the pauper was not able to pay him. The Court held, that the apprenticeship continued; that the pauper's service in *Offerton* was a service under it; and that his settlement was in *Offerton*.

The master of a parish apprentice agreeing that the apprentice shall work for his own benefit, doth not imply giving up the indenture.

Rex v. *Austrey*, *H.* 31 *Geo.* 2. *Burr. S. C.* 441. 2 *Bott*, 410. 1 *Nol. P. L.* 499, 500. 512. 3*d edit.* *Francis Orton*, being then about ten years of age, was, in *April*, 1744, bound a parish apprentice to *Samuel Lythall* of the parish of *Grendon*, till his age of twenty-four. He served with his master there under the in-

A parish apprentice when under age cannot consent to his discharge.

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R. v. Austrey.

denture till *Michaelmas*, 1754; at which time the master, in consideration of 40*s*. then paid to him by the apprentice, agreed to discharge him; which receipt and discharge were indorsed and written by the master on the indenture, which he then delivered up to the apprentice. The said apprentice then went and hired for a year, and served that year in the parish of *Higham*. Afterwards, to wit, at *Michaelmas*, 1755, he hired for a year, and served that year in the parish of *Austrey*. He was then upwards of twenty-three years but not twenty-four years of age. The removal was to *Grendon*, and the sessions quashed the order.—By Ld. *Mansfield* C. J. The whole depends upon the question, whether he was of age, or under age at the time of his consenting to the discharge? And by comparing the dates as above, it appears that he was under age; and then his consent signifies nothing; for the consent of an infant apprentice is, as if he had given no consent at all. And if so, his subsequent services can never be considered as performed by the master's leave and consent, and so, as being a service of his master under the indenture; because this is no express and explicit leave and consent given by the master to the particular service (as in the case of *Fremington, ante*, p. 502.); but was intended to be altogether general, and is even founded in a mistaken apprehension, that the apprentice could consent to his being discharged; which he, being an infant, was not capable of doing. And the order of sessions was quashed, and the original order affirmed.

Delivering up the indentures to a parish apprentice when he is under age, does not discharge the apprenticeship.

Rex v. *Sandford*, *T.* 26 *Geo.* 3. 2 *Bott*, 391. 1 *Nol. P. L.* 520. 524. 3*d edit.* *William Webber* and his wife and children were removed from *Sandford* to *Bishopstawton*. The sessions quashed the order, and stated specially:—That the pauper was legally settled at *Bishopstawton* by birth, and was bound an apprentice by the officers of that parish at the age of eleven, to *Edmund Sage* of that place, till twenty-four: that he lived with the said *Sage* for five years, when his *master gave him up his indenture, and recommended him to live with William Verney* of the parish of *Chittlehampton, thatcher*, with whom the apprentice *made an agreement as a servant* for three years: That while he was with *Verney*, *Sage* had a conversation with *Verney*, and desired him to keep back some of the pauper's wages to provide him with clothes, apprehending that otherwise he would come upon him: That about the expiration of that time he returned to *Bishopstawton*, (where his master *Sage* then resided,) and lived with one *Toyte* there, *with his master's knowledge*, who frequently conversed with the said *Toyte* while the pauper lived with him, but not upon the subject of his apprenticeship: that after the pauper had lived with *Toyte* three months, *he came back to* Sage's *house and lived with him for a month, paying his master* 6d. *a-week for his lodging.*—By Ld. *Mansfield* C. J. It seems to me clear that the pauper could not gain a settlement after the first five years under the indenture *as an apprentice*, because neither party in fact considered the service as such: they considered the indenture as given up, and put an end to for ever; so that the service was not, nor was intended to be, in the capacity of an apprentice; neither did the pauper gain a settlement as a *servant*, because there could not be such a service in point of law during the existence of the indenture: so that though in reality there was a

service in point of fact, yet it cannot be applied to the purpose of gaining a settlement, because in point of law the indenture still subsisted. — The other judges concurred. — The order of sessions was quashed, and the original order affirmed.

Service under indentures considered as discharged, though in truth they be not.

Rex v. *Ecclesal Bierlow, E.* 6 *Geo.* 3. *Burr. S. C.* 562. 1 *Blac. Rep.* 592. 2 *Bott,* 397. 1 *Nol. P. L.* 500. 3*d edit.* The pauper, *Samuel Wilshaw*, being a parish apprentice, after he had attained the age of twenty-one years, agreed with his master to cancel the indentures, and the same were accordingly cancelled. Afterwards he hired for a year, and served that year in *Warslow*, which was within the term comprehended in the indenture. It was objected, that he was not *sui juris* when he entered into the contract to serve at *Warslow;* for the binding being by the parish under the 43 *Eliz. c.* 2. he could not, though above the age of twenty-one, cancel the indentures without the approbation of the overseers of the poor. — By Ld. *Mansfield* C. J. There seems to be no necessity of the parish officers joining to the consent to discharge this apprentice. There is no authority for it. And I see no inconvenience to the parish, or to any one else, in its being done without their concurrence. The act empowers them to bind the man-child out apprentice, till he comes to the age of twenty-four. And the act was necessary to make valid the binding of the male parish apprentice till his age of twenty-four, for he could not be bound longer than till twenty-one without the aid of the act; and two justices are to assent to this. But the same reason doth not hold as to the discharge of the apprentice; this concerns the master and the apprentice only. The latter part of the apprentice's time is of most service to the master; therefore the apprentice being of age, if the master and he agree to it, they two may dissolve the contract; if so, then this person was *sui juris* when he hired himself at *Warslow;* and consequently he gained a settlement there by a hiring and service for a year.

But when of full age he may consent to his discharge, and his consent then, together with his master's, is a good discharge, though the parish officers do not join.

Rex v. *Notton, M.* 9 *Geo.* 3. *Burr. S. C.* 629. 2 *Bott,* 412. 1 *Nol. P. L.* 500. *n.* 3*d edit.* *Benjamin Watson*, the pauper, when an infant, was bound out a parish apprentice to *Hannah Cuttle* of *South Hundley*, widow, occupier of a farm within the said township, until he should attain the age of twenty-four years. After he had served about six years, she quitted the said farm to her son *Stephen Cuttle*, and left the apprentice there with him. The said apprentice lived with *Stephen Cuttle* there several years. Afterwards, being desirous to leave the service, he applied to his master, who told him he might go where he pleased. Whereupon he hired himself at several places, and received the wages to his own use. In *May*, 1766, the said *Stephen Cuttle* gave up his indentures to him. In *February*, 1767, he hired himself to *John Baildon* of *Notton;* and the said *Stephen Cuttle* being told of it in conversation, said he thought it a good place for him. He served *Baildon* at *Notton* above forty days, and then attained his age of twenty-four years. — The Court were clearly of opinion, that the service with *Baildon* in *Notton* was not a service under the indenture of apprenticeship; consequently his residence in that parish upwards of forty days was not sufficient to gain the apprentice a settlement here.

A parish apprentice when of full age leaving his master, and the indenture being delivered up to him by the master, a subsequent service with another is no service under the indenture, though the term be not expired.

Rex v. *Harberton, H.* 26 *Geo.* 3. 1 *T. R.* 139. 2 *Bott,* 400. 1 *Nol. P. L.* 500, 501, 502. 3*d edit.* Two justices removed *John*

Apprentice when of full

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age, paying money, for his discharge, but the indentures not actually delivered up, though offered by the master to the apprentice's father, who did not take them because he thought it not material to do so, will gain a settlement by hiring and service, as if no indentures existed.

Egbert from *Harberton* to *Ashpreingnton*; the sessions quash the order, and state the following Case:—That the pauper was bound by the parish of *Harberton* an apprentice to *William Soper* of that parish until twenty-four years of age; that he continued with his said master until he was within one month of twenty-one years of age, when he deserted his service, and was absent seven months, and then he returned to his father at *Harberton*, where he stayed a few weeks, and then offered himself as a servant to one *Edmonds* of *Ashpreignton*, who refused to take him until he shewed a receipt from his master *Soper* for buying off his time, which receipt was in the following words: "*Feb.* 24th, 1783. Received of *John Egbert* the sum of 4*l.* 4*s.* for the remainder part of his time, by me, *William Soper*." That the receipt was obtained by the pauper's father at the request of the pauper. At the time the receipt was signed, and the money was paid, *Soper* offered to give up the indenture, which the father did not take, not thinking it material, and the pauper himself was not present: that the master continued to keep the indentures uncancelled until after the pauper was twenty-four years of age, when he delivered them up to him: that after the signing the said receipt, the pauper, being then in his twenty-second year, hired himself for a year to serve the said *Edmonds*, and also another year, both of which he served at *Ashpreignton*: that at the time of the pauper's hiring himself to the said *Edmonds*, he shewed him the said receipt.—This was argued in *M.* term last, when the Court took time to consider.—And now Ld. *Mansfield* C. J. (after stating the facts) delivered the unanimous opinion of the Court: As I have often said, it is of more consequence in most cases, that the law should be certain, than what the law is: it is particularly so in questions relative to settlements. And perhaps if this Court had never gone farther on the present subject than to enquire, whether the indentures were in fact cancelled or delivered up, it would have been more convenient than to have decided on the particular circumstances of each case, and to have examined whether they amounted to a relinquishment or cancelling of the indentures or not. But the cases have gone beyond that line; and therefore it might now be attended with more inconvenience to the public to overturn, than to adhere to them; even though we may not perhaps approve of the principles on which they have been determined.—Where the facts stated are such, that upon an action of covenant brought by the master against the apprentice, the pauper could plead the matter in bar, it seems to be settled that the indentures should be considered as cancelled. And to that extent the rule may be carried without much mischief; but if extended to every possible case in which a Court of equity would give relief, it would be productive of great inconvenience and uncertainty: it would increase the litigation of the poor laws, which are already a disgrace to the country; and would leave every case so much upon its own circumstances, that it must necessarily travel through every stage which the law allows, before the parties are to know what they are to expect.—If the justices at their sessions, or even out of sessions, are to be erected into Chancellors, it cannot but happen, but that on the same facts very different decisions must be made. Honest and good men, when left to decide *secundum discretionem boni viri*,

Litigation of the poor laws.

must and will vary in their sentiments. Such a rule, therefore, would be highly inconvenient, and indeed would amount to say there was no rule at all. — The question then is, whether the facts stated here are such as put an end to the indentures in law, or could be pleaded in bar to an action of covenant on them? In that light I shall consider it. The master received four guineas as a satisfaction for the remainder of the time: he gave a receipt for the money as such, and offered then to deliver up the indentures: if it was not done in fact, it was owing to the pauper's father not thinking it material; and on the pauper's attaining the age of twenty-four years, the master did in fact deliver up the indentures. — After paying the money, if an action had been brought by the master on the indentures, the pauper might have pleaded accord and satisfaction in bar; or if the master had refused to deliver them up upon demand, the apprentice might have brought trover or detinue for them. — The indentures must be considered as not existing from the time the money was paid, and then the pauper gained a settlement by hiring and service at *Ashpreington*.

What shall be a discharge of parish indentures.

R. v. Harberton.

Rex v. *Eakring*, *E.* 26 *Geo.* 2. *Burr. S. C.* 320. 2 *Bott*, 396. 1 *Nol. P.L.* 498, 499. 3*d ed.* Two justices make an order to remove *George Wilworth* from *Eakring* to *Selson*. Upon appeal the sessions discharge that order. The Case was: the said *George Wilworth* was put out a parish apprentice to *Richard Tomlinson* of *Eakring*, till his age of twenty years. He served his master under this indenture for several years at *Eakring*. About three years before he attained twenty years of age, he ran away from his master, and loitered for some time about the country. In the mean time his master died. And at *Martinmas* after, the said *Wilworth* hired himself as a servant to *William Flint*, of *Selson*, for a year, and served him that year at *Selson*, and received all his wages to his own use, the executors of *Tomlinson* taking no notice of him. But he had not, at the expiration of the said service, attained his age of twenty years. And the sessions being of opinion, that the said *George Wilworth* did not, by virtue of such hiring, and service at *Selson*, gain a settlement in the parish of *Selson* aforesaid, reversed the original order. It was contended, that after the master's death, the apprentice was at liberty to hire himself: and as he was hired for a year and served a year in *Selson*, his legal settlement was there. Apprenticeship is a personal trust between the master and servant, and is determined by the death of either master or apprentice. The counsel who were to have shewn cause against quashing the order of sessions, owned that it was not defensible. And the Court was of the same opinion.

A boy bound out as a parish apprentice may after his master's death hire himself as a servant.

Rex v. *Sheepshead*, *H.* 52 *Geo.* 3. 15 *East*, 59. *Bott*, *Cont.* 14. 1 *Nol. P.L.* 507, 508. 3*d ed.* Removal of *Thomas Lees* from *Sheepshead*, in *Leicestershire*, to *Uttoxeter*, in *Staffordshire*; the sessions quashed the order, subject, &c. — Case: The pauper was put out apprentice by a parish indenture dated 19th of *April*, 1788, by the parish officers of *Uttoxeter*, with the consent of two justices, to *Mary Rawlins*, of *Stramshall* in *Uttoxeter*, and served here there from that time for three or four years, till *March*, 1791, when she gave up the farm to her son, who agreed to take the apprentice into his service and keep him, and Mrs.

A parish apprentice not living, at the time of his mistress's death, with her appointee, under the provisions of 32 G. 3. c. 57.

What shall be a discharge of parish indentures.

R. v. Sheepshead.

Rawlins was to have nothing more to do with him. This was previous to the passing of the statute 32 *Geo.* 3. *c.* 57. During the time he lived with the son, Mrs. *Rawlins* died; the pauper continued some time longer with the son in *Uttoxeter*, serving him; when *John Rawlins* told the pauper he might do what he could for himself, and if he could not get a good place, he would get one for him. The pauper then went and hired himself for fifty-one weeks to Mrs. *Phillips* in the parish of *Field*. *John Rawlins*, on being informed by the pauper that he had so hired himself, asked the pauper what sort of a place it was that he had got; and on the pauper's describing it as a good place, *John Rawlins* said he was glad it was a good place, and he might go thither. The pauper went into Mrs. *Phillips*'s service, staid above forty days with her, and *John Rawlins* gave him a suit of clothes at that time. When the pauper left Mrs. *Phillips* he sent his wife to *John Rawlins* for his indentures, and they were delivered to her. The respondents contended that there was no service under the indentures so as to gain a settlement at *Field*. The sessions were of opinion that there was an express consent given by *John Rawlins* to the service of the apprentice with Mrs. *Phillips*. In support of the order of sessions, it was argued that there was an express consent by the son; and that the consent of the original mistress to that service was unnecessary; and Lord *Ellenborough* C. J. said, that there was no need to cite cases to shew that after one assignment of the apprentice, every assignee may go on assigning *ad infinitum*: — that there were cases enough to that effect. But the question here was, how far that statute has altered the law? His lordship asked if there were any cases since the statute. To which it was answered, that there were none; but that the provisions of that statute did not affect the present case. It enacts, "that upon the death of any master or mistress of a parish apprentice during the apprenticeship, the covenant in the indenture for maintenance of the apprentice shall not continue in force longer than three months after the death of the master or mistress." (See Vol. I. p.179.) But by § 5. there is a proviso that the act shall not extend to any parish apprentice, but to such only as shall be living with, and make part of the family, or be in the actual employment of such original master or mistress, or of any subsequent master or mistress appointed under that act, at the time of the death of such masters or mistresses respectively. That here the pauper was neither living with nor part of the family of Mrs. *R.* at the time of her death, nor of any subsequent master or mistress appointed under that act. — Ld. *Ellenborough* C. J. The words "subsequent master or mistress" mean such as become so by the provisions of the statute; it is the service under the authorised substitution that the act applies to. But how is the substitution by the party a substitution under the act? If it had not been for the act I should have been with the appellants. *Per Curiam*. Order of sessions quashed.

32 G. 3. c. 57.

Those apprenticeships which are affected by certificates, will be treated of under the head Certificates.

We now proceed to those cases which relate particularly to the evidence concerning indentures of apprenticeship.

(13.) Of Evidence relating to Indentures of Apprenticeship. (a)

Rex v. *East Knoyle, T.* 13 & 14 *Geo.* 2. *Burr. S.C.* 151. 2 *Bott,* 448. 1 *Nol. P. L.* 540. 544. 3*d edit.* The special case stated: — "And *it appearing* to this Court upon the evidence now given, that the said *J. B.* was bound an apprentice to one *W. W.* of the parish of *East Knoyle,* cordwainer, and that he served," &c. &c. But the indentures were not produced, neither did it appear to this Court, whether the duty of 6*d.* in the pound, directed to be paid by the 8 *Ann. c.* 9. was paid, or whether the indentures were stamped as the act requires. It was objected that evidence not legal had been received, for parol evidence of an indenture had been received which they state not to have been produced, and they give no reason for not producing it. And also, that it did not appear that the duty was paid, or the indentures duly stamped. But the Court over-ruled the objection, for it is stated, "that it *appeared to them* that he was bound, and it is not necessary that this evidence should appear to *us.* Perhaps the indenture was *lost;* and in that case could the justices receive no other evidence of the binding? And as to the duty and the stamp, they do not say the duty was *not* paid, or that the indenture was not stamped."

If an indenture be lost, other evidence may be received of its contents and existence.

Rex v. *Long Buckby, M.* 46 *Geo.* 3. 7 *East,* 45. 1 *Bott,* 708. 1 *Nol. P.L.* 545. 3*d ed.* Removal of the pauper, his wife, and children from *Long Buckby,* in *Northampton,* to *Newport Pagnell, Bucks;* and quashed by the sessions upon appeal, who stated, that the pauper, an illegitimate son, was born in *Newport Pagnell,* and in 1774 or 1775 was bound apprentice by indenture to *J. D.* of *Long Buckby,* shoemaker, for seven years, for a premium of 12*l.* which was paid, and the indenture regularly executed by the pauper, his mother, and *Dickens* the master, with whom the pauper served his full time in *Long Buckby.* Only one indenture was executed which after seven years was given to the pauper, and was proved to have been lost. For twelve years past the pauper had resided at *Long Buckby,* during which time he had been often relieved by that parish, and had received *town's money* from it, which *town's money* is given away at *Christmas* to parishioners: No further evidence was given by the appellants. But the respondents proved by the deputy registrar and comptroller of the apprentice duties, that it did not appear that any such indenture had been stamped with the premium stamp, or enrolled, from 1773 to 1805. But the sessions presumed that all had been rightly done, and quashed the order upon the above evidence. — *Per* Lord *Ellenborough* C. J. The question before the justices was, whether the presumption that all was rightly done, after the lapse of so many years, were sufficiently rebutted by the negative evidence of the officer; they thought not, and we cannot say they have done wrong, for the presumption of law is to be favoured: and against the negative evidence they may have set the

In 1806 a question arose on an indenture made in 1774 or 1775, which was lost. The presumption that all was rightly done after the lapse of so many years is right, notwithstanding negative evidence of stamp officers that no such indenture had been stamped, &c. during the above period.

(a) For the evidence relative to indentures and other written instruments generally, see tit. Evidence, Vol. I. where it is very fully stated.

Evidence relating to indentures.

possibility of an irregularity in the returns made to the office. The order of sessions was confirmed.

But such indentures must be most clearly shewn to be lost.

Rex v. *St. Helen's in Abingdon*, 22 & 23 *Geo.* 2. *Burr. S.C.* 292. 735. 2 *Bott*, 449. 1 *Nol. P.L.* 542. 3*d edit.* The evidence relating to the indenture was; *Joan Hudson* the mother of *Joseph Hutt*, the father of the children removed, (who had absconded,) gave in evidence, that the said *Joseph*, her son, in 1733, "was bound apprentice to his grandfather by indenture for seven years; and that the said indenture was delivered into the custody of *W. H.* his grandfather, as she had been informed by the said *Joseph* himself; but that she never saw the indenture of apprenticeship herself, and knew nothing of it, but from the information of the said *Joseph*, and it was reputed in the family that the said *Joseph* was his apprentice; and was so described in the grandfather's will." — It further appeared, that the said *Joseph* served the grandfather five years in the parish of *St. Helen*, under the said indenture. That the grandfather provided for the said *Joseph* during those five years, in clothes and necessaries; that the grandfather died in 1738, leaving *M. H.* his widow, and *John H.* his son; that application was made by the parish of *St. Saviour* in *December*, 1748, to *John*, who then lived with his mother, in the house where the grandfather died, and where his goods and effects were, to know, whether he had in his custody any indenture of apprenticeship between the said *William* and *Joseph*, and *Joseph* said he could not find it. And here the enquiry stopped, as to him and all other persons. And this was the only evidence that the indenture of apprenticeship was lost. Also *John Hutt* gave in evidence that he was employed by his father *William Hutt*, to draw an indenture of apprenticeship between his said father and the said *Joseph H.*, which he did, but not on stamped paper; and that after the death of *William Hutt*, *Joseph* refused to serve his widow, because the said paper writing was not stamped. The removal was of *Joseph*'s wife and four children from *St. Saviour*'s to *St. Helen*'s, *Abingdon*, and was confirmed by the sessions. And *per Curiam*, There is not stated enough to shew that this is a binding within the act. Both orders quashed.

So also of both parts of the indenture.

Rex v. *Castleton*, *E.* 35 *Geo.* 3. 6 *T. R.* 236. 2 *Bott*, 454. 1 *Nol. P. L.* 541. 543. 3*d edit.* *Martha Pedley* was removed from *Castleton* to *Bomford* in *Derbyshire*. The sessions quashed the order, and stated the following Case: The pauper was alleged to have been bound an apprentice to *N. Timms* of *Castleton*, by indentures bearing date in or about the year 1780. It was proved on behalf of *Castleton*, that there were two parts of the indenture, one of which remained with the parish officers of *Castleton*, and was destroyed; the other was given to *Timms*, who delivered the same to Miss *Taylor* of *Bomford*, at the time of the assignment hereafter mentioned. Application was made to Miss *Taylor*, not then nor now residing at *Bomford*, for that part of the indenture so delivered to her; who said, she could not find the same, nor did she know where it was. Miss *Taylor* is living, but was not subpœnaed to the sessions. *Timms* afterwards, by parol, assigned the pauper to Miss *Taylor* in *Bomford*, and the pauper with his consent served her in *Bomford* upwards of forty days. The sessions were of opinion, that the above was not sufficient evidence of the

indenture. The only question is, whether that part of the indenture which was delivered to Miss *Taylor* is properly accounted for? The Court thought the case too clear for argument; that if the indenture could not be produced, evidence must be adduced to shew that it was lost or destroyed. Here it was traced to the hands of Miss *Taylor*, and no further evidence was given to shew what was become of it. Order of sessions confirmed.

Evidence relating to indentures.

In *Rex* v. *Morton*, *E.* 55 *Geo.* 3. 4 *M.* & *S.* 48. It appeared, that only one part of an indenture had been executed, that the pauper and master were both dead at the time of the trial, and that an enquiry for it had been made of the pauper shortly before his death, who said, that the indenture had been given up to him after the expiration of the apprenticeship, and that he had burnt it, and an enquiry had also been made of the daughter and sole executrix of the master, who said, she knew nothing about it; under these circumstances the Court of K. B. were of opinion, that a sufficient enquiry had been made to render parol evidence of the contents admissible; and the distinction made between this case and the case of the *King* v. *Castleton* was, that in that case there was evidence of a fact which made a further search necessary, but that in this case the same information, which traced the instrument into the pauper's possession, plainly shewed that any further search would have been nugatory. Here there was no proof that the instrument ever existed in the possession of the pauper, unless his declaration could be taken as evidence: and if it could, he declared in the same breath, that it existed no longer. When therefore the pauper, by whose information alone the parties were acquainted with the fact of his having had the instrument in his possession, at the very same time declared, that it was destroyed, it became unnecessary to search among his papers. See *Phill. Ev.* 438. 6th *edit.*

Proof of loss of indenture.

Indeed parol evidence of an indenture ought to be admitted with great caution, and not without sufficient proof that the original could not be come at. And in case of parol evidence, it seemeth that all those circumstances, without which the indenture would not be good if produced, ought to be proved satisfactorily to the Court; as, that the indenture was written upon stamped paper or parchment; that it was executed by the parties; what sum (if any) was given with the apprentice; and that an additional stamp upon the account of such sum of money or other valuable thing was also impressed. Otherwise, where the indenture upon the face of it would be bad, it may possibly be secreted by those whose interest it is that it should not appear.

In *Rex* v. *Middlezoy*, *T.* 27 *Geo.* 3. 2 *T. R.* 41. 2 *Bott*, 452. *Phill. Ev.* 483. 1 *Nol. P.L.* 531. 535, 536. 540. 544. 3*d edit.* Where the respondents had given notice to the appellants to produce an indenture of apprenticeship, by which the pauper was bound in the appellant parish, and which indenture was accordingly produced at the trial of the appeal, the Court of King's Bench held, that the sessions ought not to have required the respondents to prove the execution, but that the indenture should have been admitted *primâ facie* as duly executed.

Indenture produced, but no subscribing witnesses thereto; those who call for it from the opposite party need not prove its execution.

In a subsequent case, however, of *Gordon* v. *Secretan*, *T.* 47 *Geo.* 3. 8 *East*, 548. 1 *Nol. P.L.* 538. 3*d ed.* Ld. *Ellenborough* C. J. said that the case of the *King* v. *Middlezoy*, which was

But now it is held that it must be proved by the party

Evidence relating to indentures.

calling for it, though it come out of the hands of the adverse party.

much questioned at the time, had been since over-ruled. And that it was not enough to give notice to the opposite party in a cause to produce an instrument in his hands, in order to dispense with any further proof of it by the party giving the notice; but that the production of it at the trial in pursuance of such notice, did not supersede the necessity of proving it by one of the subscribing witnesses, if any, as in ordinary cases. — And *Lawrence* J. said, that it had been so decided by Lord *Kenyon*, in case of a will, which the adverse party in whose hands it was, had notice to produce and did produce, that the party calling for it was bound to prove it by calling one of the subscribing witnesses.

See also *Pearce* v. *Hooper and others*, 3 *Taunt*. 62. and *Orr* v. *Morice*, 3 *Br*. & *B*. 139. *Phill*. *Ev*. 431, 432. *6th edit*.

When a copy is evidence.

Where the deed is proved to be in the hands of the opposite party, who, upon being called upon, refuses to produce it, a copy of it will be good evidence; but such copy ought to be proved by a witness who has compared it with the original. *Bull*. *N*. *P*. 254. See *Phill*. *on Ev*. *6th edit*. 438.

Deed thirty years old.

Deed blemished.

If the deed be thirty years old, it may be given in evidence without any proof of the execution of it: however there ought to be some account of it, where found, &c. And if there be any blemish in the deed by razure or interlineation, the deed ought to be proved, though it was above thirty years old, by the witnesses if living, and if they be dead, by proving their hand, or at least one of them, and also the hand of the party. *Id*.

Evidence of a dying confession by the subscribing witness to a deed, may be given to prove it forged. — *Cited per Lord* Ellenborough, *C*. *J*. *in Aveson* v. *Ld*. *Kinnaird*, 6 *East*, 195.

As to the proof of execution of deeds by subscribing witnesses. See Vol. I. title Evidence, § II. See also *Rex* v. *Harringworth*, 4 *M*. & *S*. 350. stat. 42 *Geo*. 3. *c*. 46. § 2. Vol. I. p. 156.

Sealing and delivery.

Next to proving the execution, comes the sealing and delivery, which shall be presumed, until it be disproved, as it may. And see Vol. I. *tit*. Evidence, § II.

§ X. Of Settlement by renting a Tenement; and herein,

(1.) *What constitutes such a tenement as will enable a person to gain a settlement.*
(2.) *Of the value of the tenement, and how it is to be ascertained.*
(3.) *Of divided tenements.*
(4.) *Of joint occupation.*
(5.) *Who may gain such a settlement.*
(6.) *Of residence; as to time and place.*
(7.) *Of the time for which, and at which the contract is made.*
(8.) *Of fraud.*

13 & 14 C. 2. c. 12.
Persons coming to settle in tenement under

Stat. 13 & 14 *C*. 2. *c*. 12. § 1. *enacts, that it shall and may be lawful, upon complaint made by the churchwardens or overseers of the poor of any parish, to any justice of peace, within forty days after any such person or persons coming so to settle, as aforesaid,*

in any tenement under the yearly value of ten pounds, *for any two justices of the peace, whereof one to be of the* quorum, *of the division where any person or persons that are likely to be chargeable to the parish shall come to inhabit, by their warrant to remove and convey such person or persons to such parish where he or they were last legally settled, either as a native, householder, sojourner, apprentice, or servant, for the space of forty days at the least; unless he or they give sufficient security for the discharge of the said parish, to be allowed by the said justices.* 13 & 14 C. 2. c. 12. 10l. a year, removeable to place of legal settlement.

Stat. 9 & 10 *W.* 3. *c.* 11. *enacts, that no person or persons whatsoever, who shall come into any parish, by any such certificate as aforesaid, shall be adjudged by any act whatsoever to have procured a legal settlement in such parish, unless he or they shall really and* bona fide *take a lease of a tenement of the value of* ten pounds, *or shall* execute some annual office *in such parish, being legally placed in such office.* 9 & 10 W. 3. Certificated persons to gain settlement only by tenement or annual office.

By stat. 3 *Geo.* 4. *c.* 126. § 51. No collector or person renting tolls on any turnpike road, or residing in any toll house thereon, and no apprentice or servant of any such collector or person shall thereby gain a settlement in any parish or place whatsoever. (See stat. 54 *Geo.* 3. *c.* 170. § 5. *ante*, p. 269.) 3 G. 4. c. 126. Gatekeeper not by renting tolls nor his apprentice or servant.

By stat. 23 *Geo.* 3. *c.* 23. § 1. *No person or persons whomsoever now a prisoner or prisoners, or who shall hereafter become a prisoner or prisoners in the* K. B. *prison or the rules thereof, shall gain or be adjudged or deemed to gain a settlement in the parish of* St. George the Martyr, *in the borough of* Southwark, *in the county of* Surrey, *by renting a house, part of a house, lodging, furnished or unfurnished, or any other premises whatsoever, within the said parish, or by being rated to and paying any rates or taxes for the same, whilst he, she, or they shall be such prisoner or prisoners: nor shall any person or persons gain, or be adjudged or deemed to gain a settlement within the said parish, by or by reason or on account of living or having lived or resided with any prisoner or prisoners, within the said prison or the rules thereof, as or in the capacity of a hired servant; any law, statute, usage, or custom to the contrary notwithstanding.* 23 G. 3. c. 23. Prisoners in K. B.; not by renting a tenement, or payment of rates; nor their servants by residence.

Stat. 52 *Geo.* 3. *c.* 72. § 8. Enacts, that no person or persons shall by residence in any house, lodge, or other building erected, or to be erected within the forest of *Alice Holt* in the county of *Southampton*, gain thereby any settlement in the parish of *Binstead*, in the said county in which the said forest is situated. 52 G. 3. c. 72. Residence in forest of Alice Holt not to gain settlement in Binstead.

By stat. 13 & 14 *C.* 2. *c.* 12. a person was removeable from any tenement under the yearly value of 10*l.*, provided the complaint were made within forty days from such person's coming to settle in the tenement. It therefore followed, that if no complaint were made during those forty days, he thenceforth continued there irremoveable; in other words he had gained a settlement in the parish in which the tenement was: and it likewise follows by inference from the words of the statute, that persons coming to settle on a tenement of 10*l.* *per annum*, are altogether irremoveable. 13 & 14 C. 2. c. 12.

A very material, and, it is conceived, a beneficial, alteration has recently been made in this branch of the law of parochial settlement; by stat. 59 *Geo.* 3. *c.* 50. (intituled " *An act to amend* 59 G. 3. c. 50. Settlement shall not be acquired by

59 G. 3. c. 80.

renting any tenem nt, except a house or land in the parish, *bona fide* hired at and for 10l. a year, &c.

the laws respecting the settlement of the poor, so far as regards renting tenements," and passed 2nd *July*, 1819), reciting that "many disputes and controversies have arisen respecting the settling of poor people, in parishes in *England*, by the renting of tenements;" it is enacted, "that from and after the passing of this act no person shall acquire a settlement in any parish or township maintaining its own poor in *England*, by or by reason of his or her dwelling for forty days in any tenement rented by such person, unless such tenement shall consist of a house or building within such parish or township, being a separate and distinct dwelling-house or building, or of land within such parish or township, or of both, *bonâ fide* hired by such person at and for the sum of 10*l*. a year at the least, for the term of one whole year; nor unless such house or building shall be held, and such land occupied, and the rent for the same actually paid, for the term of one whole year at the least, by the person hiring the same; nor unless the whole of such land shall be situate within the same parish or township as the house wherein the person hiring such land shall dwell and inhabit; any thing in any act or acts, or any construction of or implication from any acts, or any usage or custom to the contrary in anywise notwithstanding."

This important act in few words comprehends the following particulars:

1. Nature of the tenement: It must consist of a separate and distinct dwelling-house or building, or of land, or of both.
2. Hiring and rent: It must be *bonâ fide* hired at and for the sum of 10*l*. a year.
3. Term: It must be hired for one whole year.
4. Occupation: The house or building must be held, and the land occupied for one whole year.
5. Payment of rent: Rent must be actually paid for one whole year.
6. The whole of the tenement must be within the parish or township, in which the party dwells or resides.

These particulars will be adverted to in the following divisions of the subject.

As, however, the operation of the act is restrained to *England*, and many cases may still be expected to occur, subject to prior enactments and decisions, it is judged expedient to retain them in the present edition of this work. For the construction of the act, see *Rex* v. *Inhab. of North Collingham*, 4 *Geo*. 4. 1 *B. & C.* 578. and *Rex* v. *Inhab. of Ampthill*, 2 *B. & C.* 847. *post*, p.569.

(1.) What constitutes such a Tenement as will enable a Person to gain a Settlement by Residence thereon.

Concerning this, it hath been adjudged as follows:

Incorporeal hereditaments.

An incorporeal hereditament is a tenement within the meaning of the statute, *Rex* v. *Piddletrenthide*, 3 *T. R.* 772. *Rex* v. *Hollington*, 3 *East*, 113. *Rex* v. *Chipping Norton*, 5 *East*, 239., and in many other cases.

Renting a coney warren

Kinver v. *Stone*, *H.* 12 *G.* 1 *Stra.* 678. 2 *Sess. Ca.* 109. 2 *Bott*, 92. 2 *Nol. P. L.* 4. 9. Upon a special order of sessions, it

was stated, that the pauper rented a *coney warren* and a cottage upon it at 10*l.* a year, which the justices were of opinion did not gain him a settlement. — But by the Court: A *mill* (See *Evelyn* v. *Rentcomb, post,* p. 544.) hath been held to be a tenement within the statute, and why not this? It is his ability to pay 10*l.* a-year that is the foundation of the settlement; and whether he pay it for a house of habitation, or for a warren which brings him in a profit, is not material. The order of sessions must be quashed.

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will give a settlement.

Rex v. *Piddletrenthide, T.* 30 *Geo.* 3. 3 *T. R.* 772. 2 *Bott,* 99. 2 *Nol. P. L.* 9. 13. 36. 49. In this case there were two points, the second of which was this: The pauper rented (*inter alia*) a warren to kill rabbits for his profit, called *Grange Warren,* with a small house on it to keep nets, in the same parish, at 30*l. per annum;* and also another warren for the same purpose, at 15*l, per annum.* The pauper and his man sometimes slept in the house at *Grange Warren.* He had no right to the soil in either of the said warrens, except that of entering upon and killing rabbits there; the persons of whom he rented the warrens constantly depasturing the same, and ploughing some part thereof. And it was held by Ld. *Kenyon* C. J. that this taking was sufficient, for it was a pernancy of the profits of the land, by the mouths of the rabbits. A free warren is the subject of a family settlement; a *præcipe* will lie for it; and the renting of it is sufficient to give a settlement.

So, though the tenant have no right to the soil.

Rex v. *Old Alresford, T.* 26 *Geo.* 3. 1 *T. R.* 358. 2 *Bott,* 97. 2 *Nol. P. L.* 10. Removal from *Old Alresford* to *Chilton Candover,* and quashed by the sessions. The pauper and his father resided in *Old Alresford* under a certificate from *Chilton Candover;* the father rented a house and piece of land for several years at 3*l.* a year in *Old Alresford,* and during two years he held, under a parol agreement, *the fishery of Alresford pond, with the grates,* &c. containing about sixty acres, *and* also the *spearsedge, flags, and rushes* growing in and *about the said pond, and the right of cutting the sedge* growing *on a* piece of rough *meadow,* containing seven acres, not being part of the said pond, for which the father paid Mr. *Edwards* 10*l.* a year, and was to supply his house with fish: during the time the father held the said premises of *E.* he rented under a parol demise *the fishery of Causeway river in New Alresford, with* the grates to a fish-house there at 3*l.* a year. The said house and piece of land first mentioned, and the right of cutting sedge, &c. on the said seven acres of rough meadow ground, and the said fishery, &c. last mentioned, were together of the annual value of 10*l.*, without taking the said pond, or any thing thereto belonging, into the account. — Ld. *Mansfield* C. J. Upon this state of the case, the Court will consider that the fishery and the soil passed together; therefore the pauper took a tenement within the statute. — *Ashhurst* J. There is no doubt but a fishery is a tenement. Trespass will lie for an injury to it; and it may be recovered in ejectment. — *Buller* J. The fact of letting a fishery is sufficient, and we must presume that the soil passed along with it; though I am by no means ready to allow that if it had been any other kind of fishery, it would not have given a settlement. Order of sessions affirmed.

Renting a fishery will gain a settlement. *Q.* Whether the kind of fishery be material.

Rex v. *All Saints, Derby, E.* 56 *Geo.* 3. 5 *M. & S.* 90. Where a pauper by order of a corporation, made at a common-hall, was

Liberty (by order of a cor-

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poration) to take sand and gravel from a river held a tenement.

allowed the liberty to take sand and gravel from the bed of a river, (of which the corporation were entitled to the soil,) with a condition that he sold the sand to the inhabitants of the town at a certain rate; for which liberty he paid to the corporation at the rate of 10*l. per annum.* The Court of K. B. held that he thereby acquired a settlement. — Ld. *Ellenborough* C. J. said, this was a tenement as it subsisted in the corporation, and the pauper is by their permission let into the enjoyment of it. I do not know that we are obliged to go into the title; certainly a corporation cannot demise except by deed; but we find the pauper in the occupation of the land by their permission, and this occupation must by fair intendment, be taken to have been an exclusive one, for otherwise it would have been reduced to a thing of no value; the corporation could not have used the land, without interfering with the pauper's right. The pauper seems to have been in the pernancy of the whole profits of the land; he took all which covered the surface of the land. It is, therefore, as much a tenement as *prima tonsura.* If the question turned upon the demise, I should feel difficulty; but I think that in point of pernancy and enjoyment, this must be considered as a tenement.

Renting a cattle-gate gains a settlement.

Rex v. *Whixley, H.* 26 *Geo.* 3. 1 *T. R.* 137. 2 *Bott,* 97. 2 *Nol. P. L.* 10. 28. 42. Removal from *Whixley* to *Healough,* and quashed by the sessions. The pauper served an apprenticeship to *R. P.* in *Whixley,* who was then residing there under a certificate from *B.* In the two last years of his apprenticeship his master rented a dwelling-house, garden, &c. of the value of 1*l.* 11*s.* 6*d.* a year, and also a meadow of 7*l.* 10*s.* a year; and also at the same time (*viz.* for those two years) he occupied two cattle-gates of the value of 1*l.* 4*s.* a year, in a stinted pasture, on condition that the said *R. P.* should keep in repair the common highway gates, which the persons having a right to the cattle-gates were bound to sustain. The question for the opinion of the Court was, *Whether the* said *cattle-gates* were a *tenement* within the statute? In support of the order of sessions it was urged, that these cattle-gates are not like commons. They are conveyed by lease and release. The owners of them are tenants in common, they have a joint possession and several inheritance, and are as much demiseable as any several tenement whatsoever. It was answered, that he occupied those cattle-gates on condition of keeping the highway-gates in repair, and that this was only a licence to depasture his cattle in consideration of his keeping the said gates in repair. — Ld. *Mansfield* C. J. said, these cattle-gates pass by lease and release, and cannot be devised but according to the statute of frauds; they are therefore to be considered as a tenement within the statute. Order of sessions affirmed.

Renting a right of common in gross, gains a settlement.

Rex v. *Dersingham, T.* 38 *Geo.* 3. 7 *T. R.* 671. 2 *Bott,* 105. 2 *Nol. P.L.* 10. 15. 49. Removal from *Ingoldesthorpe* to *Dersingham,* and confirmed by the sessions. Case: The pauper in *June,* 1795, went to reside at *Dersingham,* in a house with half an acre of land, and the going of two cattle on *D.* common, which he rented of one *Pretty,* at the rent of 6*l.*, till the *Michaelmas* following; he continued to occupy the same till the succeeding *Michaelmas,* viz. *Michaelmas* 1796, at 8*l.* a-year. About the time he went to *D.*, in *June,* 1795, he hired of one *Smith* the going for three other cattle upon the same common, till the *Candlemas* following, at

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the rent of 1*l*. 11*s*. 6*d*., and of one *Chadwick* the going for one other cattle on the said common for the same time, at the rent of 10*s*. 6*d*. The common rights in question were rights of common in gross. The whole rent paid was 10*l*. 2*s*. for the year. — Ld. *Kenyon* C. J. It appears that the rights of common were rights of common in gross, and that puts an end to the question. A common in gross is a matter of tenure. Ld. *Coke* says that a *præcipe* will lie for it. And there is no doubt but that the pauper rented those rights of common. Order of sessions confirmed.

A settlement may be gained by renting the tolls of a market.

Rex v. *Chipping Norton*, *T.* 44 *Geo.* 3. 5 *East*, 239. 2 *Bott*, 112. 2 *Nol. P. L.* 9. 51. Removal from *Chipping Norton* to *Over Norton:* the sessions quashed the order. — The pauper being legally settled in *Over Norton*, went to live at *Chipping Norton*, where he rented a house at 8*l*. 10*s*. *per annum*. The corporation of *Chipping Norton is possessed of* the *fairs and markets* within the Borough, and *of the toll for all cattle actually sold at the same*. The pauper at a court-leet took the said toll by a verbal agreement of the corporation at 12*l*. a-year, and continued to collect it under that agreement for two years, when it was agreed that he should have it for ten guineas, under which last agreement he collected it for several years more. — In support of the order of sessions, were cited *Rex* v. *Piddletrenthide*, *Rex* v. *Hollington*, and *Rex* v. *Old Alresford*, to shew that an incorporeal hereditament was within the statute. And Lord *Coke's* words are (*Co. Litt.* 19. *b*. 20.) "The word *tenements* includes not only all inheritances which are or may be holden, but also, all inheritances issuing out of any of those inheritances, or concerning or annexed to, or exerciseable within the same, though they lie not in tenure; therefore these may, without question, be entailed, as rents, estovers, commons, or other profits whatsoever, granted out of land; or uses, offices, dignities which concern lands or certain places, &c., because all these savour of the realty." And it was added, that the renting of tolls had been so much considered as the taking of a tenement within the 13 & 14 *Car.* 2., that by section 56. of the general turnpike act, 13 *Geo.* 3. *c.* 84. (*a*) it is expressly provided, that no toll-gate keeper shall gain a settlement by renting the tolls. But on the other side it was said that this was a mere *personal contract;* and it was objected further that a corporation could only demise under *seal*, and here the tolls were stated to have been taken by a *verbal* agreement. And Ld. *Ellenborough* C. J. said, that as no interest passed to the pauper by such parol demise, the question could not be raised. It was a mere licence to him to collect the tolls, the right to which still remained in the corporation; though it might be a ground on which to apply to a court of equity. But if this difficulty (as to the mode of agreement) could be got rid of, the other point, as to the taking of the tolls being a taking of a tenement within the construction which had been put upon that statute, might be disposed of in favour of the settlement, upon the authority of Lord *Coke*, in his comment upon the statutes of *Westminster*, 2: And on *Webb's* case, 8 *Rep.* And on the opinion of Lord *Kenyon* in the case referred to, that a taking of an incorporeal tenement

(*a*) Repealed by stat. 3 G. 4. c. 126. § 1. and replaced by § 51. *ante*, p. 445.

Renting Water-mill, Wind-mill, Pasture, &c.

will confer a settlement. It being found that no other instrument had been executed, except a bond given by the pauper to the corporation, with sureties for the rent, the Court said that could convey nothing *from* the corporation; and the order of sessions was quashed.

The renting of a water-mill gains a settlement.

Evelyn v. *Rentcombe*, *H.* 10 *Ann.* 2 *Salk.* 536. 2 *Bott*, 92. 2 *Nol. P. L.* 9. An order was drawn up specially to have the opinion of the Court, Whether renting of a water-mill of 10*l.* a-year would make a settlement? — And by the whole Court clearly; A mill is a *tenement*, and the renting thereof must gain a settlement within the statute; that is, if the party live therein, or within the parish.

So a wind-mill.

Rex v. *Butley*, *T.* 10 *Geo.* 2. 1 *Sess. Ca.* 320. *Burr. S. C.* 107. 2 *Bott*, 93. 2 *Nol. P. L.* 9. The question was, Whether renting a *wind-mill* at 14*l.* a-year gained a settlement? it having been determined that a water-mill did. By the Court, it is the same as if he had rented land of that value.

Taking the pasture of a piece of land gains no settlement.

Taking a pasture ground; Q.

Rex v. *Minchin-Hampton*, *E.* 3 *Geo.* 2. 2 *Sess. Ca.* 132. 2 *Stra.* 874. *Burr. S. C.* 316. 2 *Nol. P. L.* 9. The pauper rented in the parish of *Bisley* lands of the yearly value of 8*l.* from his father, an house of the yearly rent of 1*l.* 10*s.* from his uncle, and the same year *took the pasture* of a piece of land in the said parish from *All Saints day* to *Candlemas*, and paid 12*s.* for the same, which piece of land was worth 6*l.* a-year. It was urged, that this was a good settlement, because during those three months the man was not removeable. But in this case the Court held, that *taking the pasture of a piece of land* was not more than taking the herbage, or than taking the common, which could not be esteemed part of a *tenement* within the meaning of the statute; but seemed to think, that if the words had been, that he had *taken a pasture ground* for three months, that would have made a good settlement. But the case went off upon another point, *viz.* for want of an adjudication.

Renting hay-grass and aftermath gains a settlement.

Rex v. *Stoke*, *E.* 28 *Geo.* 3. 2 *T.R.* 451. 2 *Bott*, 98. 2 *Nol. P. L.* 9. 16. The pauper, in addition to a house and land, in the parish of *Barlaston*, took the hay-grass and aftermath of a meadow for 2*l.* 5*s.* 6*d.* for ten months, in the same parish. He paid no taxes, but he fenced the meadow and spread the hillocks, and the question was, Whether this were a tenement within the statute? The sessions thought it was not. And in support of their order it was said that the agreement for the hay-grass and aftermath conveyed no interest in the soil, so as to give the pauper a settlement. That he derived from the contract a mere personal right to take the hay-grass and aftermath: that he was to take not the general but only the particular profits of the land. That *Co. Litt.* 4. *b.* took the distinction between *pasturam* and *pascuum;* by the former the ground itself passes, but the latter conveys no interest in the soil. — *Ashhurst* J. It is clear from the stating of the case, that the land was intended to pass; it states, " that for ten months the pauper took the hay-grass and aftermath of the meadow." Now why should he have taken it for ten months if the soil was not intended to be conveyed; *there could be no other profits of this ground but the hay-grass and aftermath;* and *if a man grant all the profits of* the ground, *he grants the land* itself. — *Buller* J. This is like the case put in *Co. Litt.* where *pastura* carries the

land itself. The pauper was to have the hay and aftermath, which was all the produce of the soil. This is not like taking hay-grass after severance, for that is only a chattel; but here the contract was, that the pauper should take all the grass which should grow; he was to cut it, and make it into hay himself; and after that he was to have every thing that grew on the land for ten months. — *Grose* J. of the same opinion. — Order of sessions quashed.

Renting pasture. After-grass, &c.

Rex v. *Inhab. of All Saints, Cambridge, M.* 3 *Geo.* 4. 1 *B. & C.* 23. 2 *Nol. P.L.* 10. Removal of *Lydia Fowler* from *Holy Trinity* to *All Saints, Cambridge.* Order confirmed on appeal, subject, &c. Case: The pauper's maiden settlement was in *All Saints'* parish. In 1793 she married *William Fowler*, a maker of chair-bottoms and mats; and the question was, whether he had any legal settlement. The following were the circumstances as to that point. In 1807 he hired a house in the parish of *St. Peter's, Cambridge*, of the value of 9*l.* 10*s.* per annum, and resided therein with his family above a year; during the same time he had two separate parol contracts for two ponds, or for the rushes and flags growing therein, upon these terms: one of the ponds was of the extent of three acres, in which he was to have the exclusive right of cutting the rushes and flags at his pleasure, but not of draining off the water; the owner had the right to use the water, or to drain it off, as he thought proper. For this *W. F.* was to pay 5*s.* a year to the occupier of the farm in which it was situated. The pond was not fenced off from the rest of the field, and the occupier's cattle, when depasturing there, used the pond for drinking at; but the rushes and flags were not such herbs as cattle would eat. The other pond was only about a quarter of an acre, and was occupied under similar circumstances, at the yearly rent of 5*s.*, and two door-mats of the value of 2*s.* The next year *W. F.* agreed to pay 10*s.* for the same, but died before the rushes were all gathered. The contracts for the ponds subsisted during all the time that *W. F.* occupied the house in the parish of *St. Peter's.* The sessions thought this was not sufficient to establish a settlement in that parish, and confirmed the original order. In support of the order of sessions, it was contended that this was a personal contract for the rushes, and not a tenement. The cases of *Pincomb* v. *Thomas*, *Cro. Jac.* 524. *Warwick* v. *Bruce*, 2 *M. & S.* 205. *Rex* v. *Old Alresford*, 1 *T. R.* 358. *Rex* v. *Whixley*, 1 *T. R.* 137. *Rex* v. *Stoke*, *ante*, p.544, and *Rex* v. *Bowness*, *post*, p.546, were cited. — *Per Curiam.* There is no valid distinction between a lease of grass and one of rushes growing upon the land. This case is therefore similar to that of *Rex* v. *Stoke.* If this had been a bargain for any thing in a state to be severed, as in *Warwick* v. *Bruce*, it would have been a personal contract; but here, the pauper's husband had a right to all the rushes which might grow in the ponds during the year. That gave him a continuing interest in the soil for the whole year; and by renting those ponds, together with the house in the parish of *St. Peter's*, he held a tenement of greater value than 10*l.* per annum. It is found as a fact, that he resided in that house for more than a year; he therefore gained a settlement in that parish. The consequence is that the pauper was improperly removed to the parish of *All Saints*, and that both orders must be quashed.

Where a pauper resided for a year in a house in the parish of *A.*, and during all that time had two subsisting parol contracts for two ponds, or the rushes and flags growing therein, which he was to have the exclusive right of cutting at his pleasure: Held, that these were a sufficient tenement (being together above the value of 10*l.* per annum) to confer a settlement in *A.*

Renting pasture. After-grass, &c.

Renting fogg or after-grass, gains a settlement.

Rex v. *Brampton*, 4 *T. R.* 348. 2 *Bott*, 101. 2 *Nol. P.L.* 9. 49. The pauper, *T. Caile*, rented certain premises in *Brampton* in *Cumberland*, of the yearly value of 9*l.*, and during part of the time took the fogg or after-grass of two fields, the one for 30*s.* the other for a guinea a-year; the whole of which together he occupied for more than forty days. The sessions confirmed the order, by which he was removed from *Penrith* to *Brampton*. On a rule to shew cause why the order of sessions should not be quashed, the Court were clearly of opinion that the pauper gained a settlement in *Brampton;* and that this could not be distinguished from the above case of *Rex* v. *Stoke*. And they added, that taking land for a particular purpose, such as that of setting potatoes, was sufficient to confer a settlement. Order of sessions confirmed.

Taking land for a particular purpose will gain a settlement.

Crop of growing oats bought at an auction.

Rex v. *Bowness*, *T.* 55 *Geo.* 3. 4 *M.* & *S.* 210. Where a person rented and resided on a tenement of 4*l.* a year, and in the same year bought at a public auction, on 12th *August*, four lots of oats growing on the field, for 12*l.* 14*s.*, which oats were of different kinds, that ripened at different periods, and he began to reap them on 14th *September*, and continued reaping them as they ripened, and carted them away at intervals between the 14th *September* and 3d *November*, on which day he carted off the last load: the Court held that he did not thereby acquire a settlement; and Lord *Ellenborough* C. J. said, It appears to me that it has been uniformly adopted as the rule for construing the statute of *Car.* 2., as much as if the word itself had been inserted in the statute, that the *coming to settle in* means by *renting* or holding in the character of tenant. It is true this word *renting* is not in the statute, but what is found in the subsequent statute, 9 & 10 *W.* 3. *c.* 11., shews pretty well how the statute of *Car.* 2. was understood; for the subsequent statute enacts "that no person who shall come into a parish by certificate shall gain a settlement therein, unless he shall take a lease of a tenement of the value of 10*l.* &c." Therefore, certainly this enactment was framed upon an understanding that the *coming to settle* in the statute of *Car.* 2. meant a taking under a letting or renting. Upon a subject like this, one is afraid to enlarge, lest what may be said should lay the foundation of future discussions. What has been said already upon the subject has, according to my understanding of it, reached the extreme limits of common sense. It is, therefore, sufficient to say upon the present occasion, that this was a purchase and not a renting, or in any way holding as tenant, and upon that construction this person did not gain a settlement. I feel no inclination to extend the decisions upon this subject; indeed I hardly go with them to the extent that they have gone already, and think it much better in this case to abide by the statute.

Renting a dairy does not gain a settlement.

Rex v. *Lockerly*, *H.* 25 *Geo.* 2. *Burr. S. C.* 315. 2 *Bott*, 99. *n.* 2 *Nol. P. L.* 9. 12. (Although this case is now over-ruled, yet, as it was the first of a particular class which has undergone considerable discussion, it is thought fit to give it at length in this place, that the progress of judicial opinions upon this subject may be observed and understood.) Removal from *Lockerly* to *Shirefield English*, both in the county of *Southampton:* and quashed by the sessions. The pauper was settled in *Shirefield English*, but removed to *Lockerly*, and there entered into articles of agreement with one *J. M.* as follows: *M.* covenanted with *Edwards*, (the

pauper) to demise to him to a dairy of sixteen cows with a messuage or tenement and dwelling-house, and feeding for the said cows on twenty-one acres of clover ground, and thirteen of meadow land, with the after-leaze of a meadow, all in *Lockerly;* "also the run of the yard, and the arshes of the farm (of which the dairy, &c. were part) for pigs; and the run of one horse with the cows; — for one year, *M.* to allow to *E.* all the sherl wheat arising from the corn growing on the said farm: and also provide for the use of the cattle, when wanted, five tons of hay; and for the same feed of the cattle, cause the above-mentioned lands to be laid up at certain times; and should put the tenement into repair, and fetch the goods, necessaries, and fuel of *E.* home to the said messuage. And if the said cows shall not be delivered of their calves by the 1st of *May* following, *M.* shall deduct out of the rent reserved 2*s.* per week for every cow not so delivered, until she shall be delivered, and also what may be reasonable for every calf wanting to each cow. *E.* to pay to *M.* 3*l.* 5*s.* for every such cow; payable quarterly." *E.* entered and occupied; the cows were fed on the lands mentioned; and during some time, sheep belonging to *M.* were fed with them on a part of them; but the thirteen acres of meadow were never fed, but by the said cows. After argument, *Wright* J. said, That the *land* seemed to have *remained to M.* for *he* was to lay it up at such a time. That a tenement must lie in tenure, and must relate to land, whereas this contract related to cows. The *pasture* of the ground, *generally* is not *let;* but only the feeding of sixteen cows. That the value of the meadow was not stated. That it was *only an agreement for the use of the cows,* and the feeding of them; and was merely personal. That no interest in the land passed or was intended to pass. (And he said that if in the case of *Minchin Hampton,* it were an agreement "for the pasture only of the land," he should doubt of it.) To this the other judges assented; and quashed the order of sessions. *Renting a dairy.*

Rex v. *Piddletrenthide,* *T.* 30 *Geo.* 3. 3 *T. R.* 772. 2 *Bott,* 99. 2 *Nol. P. L.* 13. *John Belly* and his wife and family were removed from *Chaldon Herring* to *Piddletrenthide,* both in *Dorsetshire.* The sessions confirmed the order, subject to the opinion of the Court of K. B. on the following Case: — That for two or three years, while the pauper lived in *Chaldon Herring,* he rented in that parish a dairy of thirty cows, some at 5*l.* 10*s.* and others at 5*l.* *per* cow, with liberty to cut furze on *Grange Warren,* and on other parts of the farm, for the use of the dairy only: and a warren to kill rabbits for his profit, called *Grange Warren,* with a small house on it to keep nets, in the same parish, of the same man, at 30*l.* *per annum;* and also another rabbit warren in the neighbourhood for the same purpose, at 15*l.* *per annum.* The cows were to feed in particular grounds at particular seasons of the year, as is usual in the letting of dairies. The pauper and his man sometimes slept in the house in *Grange Warren.* The pauper had no right in the soil of either of the said warrens, except that of entering upon and killing rabbits there; the persons of whom he rented the warrens constantly depasturing the same, and plowing some part thereof. — Ld. *Kenyon* C. J. If we were now called upon for the first time to make a decision on this statute, perhaps I should have some difficulty on the subject; but Renting a dairy will gain a settlement.

Renting a dairy, or rabbit warren.

R. v. Piddle-trenthide.

the Courts have put a liberal construction on it. I cannot quite agree with the above determination of *Rex* v. *Lockerly;* because, after it had been decided in so many cases, that an incorporeal hereditament would give a settlement, I should have thought that that case would have received a different determination. But without considering that case, I think that the pauper took a tenement in *Chaldon Herring*, both by renting the dairy and the warren. Ld. *Coke* says that *prima tonsura* is a tenement; then the dairy was a tenement. The other taking was also sufficient; for it was, if I may use the expression, a pernancy of the profits of the land by the mouths of the rabbits. A free warren is the subject of a family settlement; a *præcipe* will lie for it; and the renting of it is sufficient to give a settlement. If this case had been precisely similar to that of *Rex* v. *Lockerly*, perhaps I should have hesitated before I agreed to overturn that decision; but as this is distinguishable from that case (though the distinction is nice) I think that the pauper gained a settlement in *Chaldon Herring*. — *Ashhurst* J. It seems difficult to reconcile all the cases on this subject. If *Rex* v. *Lockerly* be law, I do not see how this pauper can have gained a settlement in *Chaldon Herring:* but as there are authorities both ways, I am inclined to think that a settlemeut was gained in *Chaldon Herring;* the *criterion*, by which the question is to be decided, being the ability of the person taking the tenement. — *Buller* J. In all doubtful cases one leading ground is, the ability of the pauper to pay the 10*l*. *per annum*. But on the facts here stated, I think this person rented a tenement within the construction of the statute of *C.* 2. I cannot agree with the determination of *Rex* v. *Lockerly*. That was considered as a personal contract; but all contracts are in all respects personal. The question in such cases really ought to be, whether or not it be *a contract to receive the profits out of land?* The present I consider as such; and so was that in *Rex* v. *Lockerley*. I am therefore of opinion, that the conclusion drawn in that case was wrong. As to the other point, I do not consider this merely as a privilege to kill rabbits when the pauper could find them, and that the landlord might take them all if he chose it; but the warren was to be kept in the same state as it was when it was let; otherwise the contract between the landlord and the tenant would be destroyed. In that respect then the pauper had an interest in the land. Besides he took a house with the warren. — *Grose* J. It is impossible to reconcile all the cases on the subject; and I do not understand the ground on which that of *Rex* v. *Lockerly* was decided. In these cases, I think, that if the pauper had credit to rent 10*l*. *per annum*, he gained a settlement. The case of *Kinver* v. *Stone*, *ante* p. 540, decides the present. Both orders quashed.

So also will renting a warren to kill rabbits, though the soil be not taken, but merely a right to enter and take the rabbits.

Renting twenty cows at 3l. 10s. a-year each, to be fed in certain grounds belonging to the owner, exclusively of any other cattle is a *tenement*.

Rex v. *Tolpuddle*, *E.* 32 *Geo.* 3. 4 *T. R.* 671. 2 *Bott*, 101. 2 *Nol. P. L.* 15. *G. Hill* and wife and family were removed by an order, from *Puddletown* to *Tolpuddle* in *Dorsetshire*, which was confirmed at the sessions, subject, &c. Case: *J. Chapman* was the tenant and occupier of a farm in *Tolpuddle*, part of the stock of which farm consisted of cows, which, according to the usual course of husbandry in that county had been constantly let to some dairy-men. The pauper rented, under a verbal agreement, twenty of those cows of *Chapman*,

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at 3*l.* 10*s.* *per* cow *per annum;* it was also agreed between them (as is usual there), that the owner of the cows should feed and support them, and that they should depasture in certain lands called the *Cow-leaze Grounds* from *May-day* till the 18th *September*, and afterwards in certain meadow grounds which are kept for that purpose from the time the same are mowed; both which grounds were part of the said farm, and then in the occupation of *Chapman;* and when the pasture of the meadow grounds was consumed, that the cows should be kept by *Chapman* in some other of the farm-grounds with his other cattle, or be foddered in the farm-yard with hay by him. The *Cow-leaze* was not to be fed upon by *Chapman's* cattle from *Lady-day* till *May-day*, nor was he to feed any other cattle either in the *Cow-leaze* or meadow ground whilst the same were fed by the cows so rented. But the hay of the meadow ground was cut and taken away by *Chapman*, and the *Cow-leaze* was fed by him after the cows had quitted it, and he was to repair the fences. In case any cow did not calve before *May-day*, or afterwards, if any of them died or became barren, an allowance was to be made to the pauper; and in case of sickness amongst the cattle *Chapman* was to defray all expences. The pauper was also to have a dwelling-house, and a right of feeding a mare on the farm, and keeping his pigs in the yard, and of cutting fuel for the use of the dairy; but he had no other right whatever. The pauper had this farm for five years, and resided during the whole time in the said house in *Tolpuddle*. The above are the usual terms of letting such farms in that county, and is called the letting of a dairy.—Ld. *Kenyon* C. J. It is certainly very much to be wished that the decisions of the magistrates below should, on examination here, be found to be consonant to the laws of the land. And I am happy to find that we are relieved from the supposed inconvenience of sending down a new code of laws to the country where this question arose; because our opinion concurs with that formed by the justices in their sessions, as well as that of the justices who made the original order. From the passing of the statute of *C.* 2. to the present time, the construction put on it has been (what is called) a liberal construction, in order to confer a settlement on those persons who have the ability to take a tenement which the statute has established as the criterion. I confess, it seems to me impossible to reconcile the decision of the above case of *Rex* v. *Lockerly* with our determination in this case that the pauper gained a settlement in *Tolpuddle;* but if we are of opinion that that case cannot be supported, it will be more manly to say so in express terms, than by endeavouring to make nice distinctions, to induce the magistrates below to consider it as an authority hereafter. When the above case of *Rex* v. *Piddletrenthide* came before us, we all doubted of the decision of *Rex* v. *Lockerly;* but there being other distinct ground upon which we were warranted in supporting the settlement, we were not directly called upon to over-rule that case. But now it being impossible to distinguish between this case and that, I think we are bound to deny the authority of that case, and to substitute in its room

Renting a dairy. a better exposition of the statute *C.* 2. It has been argued, that if we decide this to be a tenement we shall depart from the words of the statute, but in this case the pauper took a tenement, emphatically a tenement. Any thing is a tenement which is a profit out of land. In order to make a tenement it is not necessary the party should have the fee simple or fee tail; any minute interest in land is parcel of a tenement; such minute interest indeed cannot be entailed, but all the parcels, when consolidated together, may. A beast-gate has been held to be a tenement, and yet that is not the whole land but the profits of the land to a certain amount. So here the profits of those lands are to be taken exclusively by the cows which the pauper rented. If the cattle had been his own and he had rented the feeding of them, that would have been unquestionably a tenement, like the taking of a pasture, the hay and aftermath. And I think that these cows were the pauper's for a certain period; they were not so far his own that he could have sold them, but they were his that he might use them under the contract for a limited time. And this was not the less the taking of a tenement, because the pauper could only enjoy the land in a particular mode, for in many farms the tenant stipulates, that he will not depasture sheep or horses on particular grounds. I do not see therefore why this is not strictly speaking a tenement, for the pauper had for a certain part of the year the exclusive right to the pasturage of these grounds to be taken by the mouths of the cattle. The other judges delivered their opinions at considerable length to the same effect. Both orders confirmed.

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What is a tenement.

The land on which the cows are fed must, however, be of the annual value of 10l.

Rex v. *Minworth*, *H.* 42 *Geo.* 3. 2 *East*, 198. 2 *Bott*, 110. 2 *Nol. P. L.* 36. Removal from *Minworth* in *Warwickshire* to *Worley Wigorne* in *Worcestershire*, and quashed by the sessions. The pauper rented from *Lady-day* till six weeks after *Michaelmas* two cows, at the rate of 5*s.* a cow *per* week of *J. G.* the tenant and occupier of certain lands in *Minworth*. It was agreed that the owner of the cows should feed and support them: they were to be fed on certain lands specified, but which lands were not of the annual value of 10*l.* *G.* was not to feed any other cattle in any of the above-mentioned lands whilst the same were depastured with the cows so rented by the pauper. In support of the order of sessions it was contended, that it was enough if the annual value of 10*l.* had arisen from something connected with the reality, though no part thereof.— *Grose* J. This case is very plain. Unless the pauper occupied a tenement of 10*l.* a-year value, he could gain no settlement. And that fact is expressly negatived; for it is stated that he rented two cows, which were to be fed on particular lands, and that those lands were not of the annual value of 10*l.* That makes an end of the question. The principle on which the renting of dairies has been holden to confer a settlement is, that in truth it is a contract for a certain interest in the land to be enjoyed in a particular manner; that alone constitutes it the taking of a tenement; and in each of these cases which have been decided on that ground, it was understood that the land itself was of the requisite value. The pauper, then, did not gain a settlement by the renting and occupation in question. — Per *Lawrence* J. In *Rex* v. *Tolpuddle*,

The value of the cows cannot form any part of the annual value.

the value of the cows was never taken into consideration as forming part of the value of the tenement. Order of sessions quashed.

Renting the feeding of cows.

Rex v. *Hollington*, *M.* 43 *Geo.* 3. 3 *East*, 113. 2 *Bott*, 111. 2 *Nol. P.L.* 16. Removal from *Breadsall* to *Hollington;* and confirmed by the sessions. The pauper being legally settled at *Hollington*, went to reside in the parish of *St. Werburgh* in *Derby*, and occupied a house there of the annual value of 5*l.* During the time he occupied this house he rented the ley of two (of his own) cows from *May-day* to *Michaelmas* at six guineas, in a large pasture containing 100 acres, and of the annual value of 250*l.* belonging to Mr. *Mundy* at *Markeaton.* Mr. *Mundy* was under no restriction as to what number of cows he kept in it.— In support of the order of sessions it was insisted that the circumstance of the pauper's having no exclusive right to the pasturage, differed this from the preceding cases. — Ld. *Ellenborough* C. J. This is nothing more than a common in gross which has been holden to be a tenement within the statute. If *Mr. M.* overstocked the land the tenant might recover in damages.— *Lawrence* J. Mr. J. *Buller* states that the question in cases like the present is this, *Whether or not it be a contract to receive profits out of land?* If that be so, it determines this case, for here the cows were the pauper's own, and the contract, which was for the pasturage of them, was, to use the words of Ld. *Kenyon* in the same case, a contract *for the pernancy of the profits of the land by the mouths of the cattle.* — Both orders quashed,

And it is sufficient, though the pauper have not an exclusive right to the pasture where the cows are fed, and the cows be his own.

Rex v. *Tisbury*, *M.* 45 *Geo.* 3. 2 *Nol. P. L.* 19. — Per *Lawrence* J. A contract to feed the cows, generally, under which they might be fed with green tares bought in the market, would not be a tenement within the act.

If the contract as to the feeding be not specific, no settlement will be gained.

Rex v. *Stoke-upon-Trent*, *H.* 49 *Geo.* 3. 10 *East*, 496. *Bott*, *Cont.* 117. 2 *Nol. P. L.* 16. Removal from *Stoke-upon-Trent* to *Norton-on-the-Moors*, and quashed by the sessions. The pauper under a verbal agreement rented and paid for the hire and privilge of milking two cows belonging to a Mr. *Repton* the sum of 5*s.* 6*d.* *per* week each cow, for forty successive weeks. The two cows were by the terms of the agreement to be depastured by Mr. *Repton* on his farm at *Norton-on-the-Moors*, in common with his other cows; and were in fact depastured on such of the lands belonging to the farm as Mr. *Repton* thought proper: the pauper never went on the lands to fetch them, but they were regularly brought up with Mr. *Repton*'s other cows to the fold-yard, and there milked by the pauper and his family. During the time the pauper so rented the said cows he resided in the parish of *Norton-on-the-Moors*, at a cottage for which he paid 50*s.* a-year: and the depasturing of the two cows, together with the cottage, was worth more than 10*l.* a-year. In support of the order of sessions, it was argued upon the principle of all the (preceding) cases, that this was a mere personal contract for the hire and privilege for milking two cows, and no tenement, which must lie in tenure and relate to land: and that all the cases went upon the ground of there being an interest in land. — But by Ld. *Ellenborough* C. J. There is no solid distinction between the case of *Rex* v. *Hollington* and this. There the pauper had only hired the depasturing of his own cows in common with the cattle

Though the cows be not the pauper's own, and he only contract for the privilege of milking them, they being to be fed on a certain farm: yet that will gain a settlement.

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of the owner in certain land; here he hired the cows themselves, which for this purpose are the same as his own, together with their depasturing in common with the owner's other cattle, upon a certain farm; all included in one contract. If the cows had been the pauper's own, this case would have been identically the same as the former; but that fact was no material ingredient in the former case; for the cows are his own for the time he hires them. — *Grose* J. said, That it was a contract to take the milk of cows to be depastured on a certain farm; which was purchasing *pro tanto* the interest in those pastures in which the cows were to be fed. — *Le Blanc* J. The only difference between this case and *Rex* v. *Piddletrenthide* (*ante*, p.547.) is, that there it was stated to be the renting of a *dairy*, which is only a contract for the hire and privilege of milking cows, which during the time are to be depastured on the owner's lands. But there the cows were to feed in particular grounds at particular seasons of the year; and here they were to be depastured on the farm in common with the owner's other cattle. In *Rex* v. *Tolpuddle*, (*ante*, p.548.) the agreement was as here, for the owner's cows at so much a-head, and though they were to have the exclusive pasturage of certain grounds during part of the year: yet that has since been held to make no difference. — "If," (said Ld. *Kenyon* in the latter case) "the cattle had been the pauper's own, and he had rented the feeding of them, that would have been unquestionably a tenement: like the taking of the pasture, hay, and aftermath; and I think that these were the pauper's for a certain period, &c.; and this was not the less a taking of a tenement, because the pauper could only enjoy the land in a particular mode." The same reasoning will apply to this case. In *Rex* v. *Minworth*, (*ante*, p.550.) there was no doubt but that the contract was for the taking of a tenement; but the value of the land on which the two cows were to be depastured did not amount to 10*l.* a-year, and therefore no settlement was gained. Now here the pauper contracted for the milking of two *specific* cows (not any cows), which were to be depastured on the farm of the owner together with his other cattle, the value of which pasturage, together with the cottage rented by the pauper during the same time, amounted to more than 10*l.* a-year. Then it was decided in *Rex* v. *Hollington*, that hiring the feeding of cows for a certain time, in common with the cattle of the owner of the pasture in which they are to be fed, is a taking of a tenement. This then is the same as if the pauper had hired the cows at so much, and the pasture for feeding them at so much more, though the two sums are compounded in one. — *Bayley* J. agreed. Order of sessions quashed.

Contract for a pasture-fed cow for the season.

Rex v. *Inhabitants of Darley Abbey*, *T.* 51 *Geo.* 3. 14 *East*, 280. *Bott*, *Cont.* 120. 2 *Nol. P. L.* 17. Removal of *W. Bainbridge*, &c. from *Duffield* to *Darley Abbey* in *Derbyshire*. The sessions confirmed the order. Subject, &c. — Case: The pauper for two years, resided in a house, and occupied a garden, in *Darley Abbey*, of the annual value of 8*l.* 18*s.* and during the whole of that time he and one *John Meyer* jointly hired the milking of a cow in the following manner: The pauper applied to Mr. *Evans*, at whose factory he and *Meyer* worked, for the milking of a cow betwixt them; Mr. *Evans* referred the pauper to his agent Mr. *Harvey* to agree for the cow, Mr. *Harvey* agreed they should

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have a cow *for the season* for 9*l*. The particular cow was pointed out; the cow was at that time upon a large farm of Mr. *Evans*, which he occupied near the factory. Nothing was said as to how or where the cow should be fed, more than that Mr. *Harvey* said that *Jerom*, Mr. *Evans*'s farming man, would inform the pauper in what pasture the cow would be first milked, and he did inform him, and so from time to time when the pasture was changed, that he might know where to go to miik her. The cow was grazed in Mr. *Evans's* pastures in the same farm for the whole of the two seasons, with other cows which were let in the same way to other workmen of Mr. *Evans*, and with other cattle belonging to Mr. *Evans*. The pauper and his partner always milked the cow during the whole time. They hired the same cow four successive seasons, and the cow was always grazed in the same way on Mr. *Evan's* farm. The summer pasturage of the cow alone was admitted to be of the value of 5*l*. each season. — After argument, Ld. *Ellenborough* C. J. It has been too long ago decided to be now shaken, that the hiring of the feeding of cows is a sufficient taking of a tenement to confer a settlement within the statute, if the tenement be of sufficient value; and here the necessary value is made up by the contract which the pauper entered into for hiring the milking of a cow in the manner stated in the case. A contract for the mere milking of a cow is indeed no more than a contract for a personal thing, and therefore unless through the medium of the cow he contracted for the pernancy of the profit of land, there could be no settlement gained. But the question is, whether by this contract, explained as it is by the subject matter and the circumstances, the owner was not to furnish the pauper with a cow to be fed upon the land. Where parties understand the subject of their contract, a few words are sufficient for the terms of it, and sometimes it may be collected from their acts without words. Here the contract was made by the pauper with a man who had a farm, and cows then feeding on it: to him the pauper applied for the milking of a cow, and *Harvey* agreed that the pauper should have a cow *for the season*, for 9*l*., and the particular cow was pointed out. The term *season* would import, according to the subject matter, during the time that the grass grew on the land to feed the cow. The cow was then fed upon the owner's farm, but nothing was *said* how or where the cow should be fed, that is, the particular land on which the cow was to be fed was not mentioned: but the pauper was told in *what* pasture the cow would be first milked; and whenever the pasture was changed he was informed of it. Then is it not to be fairly understood, when the cow was to be milked on pasture-ground that she was also to be fed there. What could be meant by changing the pasture but for the purpose of her being fed on fresh pasture. If then the owner had fed the cow on dry food, as grains, instead of pasture, it would have been a breach of the contract. The parties meant to contract for a pasture-fed cow for the purpose of milking. The principle established by the former cases cannot now be questioned, and this case is governed by it. — *Grose* J. The pernancy of profits of land must be established in order to confer a settlement by this kind of contract; here I think it was established. — *Le Blanc* J. It has been long settled that the hiring of a dairy

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of cows, whether consisting of one or more cows, where the person who lets the cows is to feed them on such land, is such a taking of a tenement within the statute, as will give a settlement. Nobody who reads this case can doubt that this was a hiring by the pauper of a cow to be fed on the pasture of him who let it. The facts are that the pauper applied to Mr. *Evans*, the owner of the farm on which there were cows, for the milking of a cow; the owner referred him to his agent *Harvey*, with whom the pauper agreed for a cow for the season at 9*l.*, and a particular cow was pointed out; and though nothing was said as to how or where the cow was to be fed, yet *Harvey* told him then that the owner's farming man would inform him in what pasture the cow was to be first milked; that is, on what particular pasture she was then fed: Is it not evident from this that it was a contract for the hire of a pasture-fed cow? It is objected that no specific land was pointed out on which the cow was to be fed; but that need not be agreed upon, nor need it have been fed upon the *same* land on which the owner was residing. It is clear, however, that this cow was to be fed upon the farm in the occupation of *Evans*, or upon land that he was to provide for her, and in fact she was depastured upon the farm all the season. — *Bayley* J. Here there can be no doubt that the contract was for the milking of a cow which should be pasture-fed during the season, either upon land of the farm in the parish where the parties contracted, and were residing, or at least within a reasonable distance of it, in order that the pauper might have a convenient opportunity of coming to milk the cow. And if the owner had fed the cow otherwise than upon pasture, an action by the pauper would have lain for a breach of the contract. Order of sessions confirmed.

Where the pauper was hired as bailiff at weekly wages, and to have the feed of two cows in the pastures of his master: held that by the feeding of the cows, which was above the yearly value of 10l. the pauper acquired a settlement.

Rex v. *Minster*, *M.* 55 *Geo.* 3. 3 *M.* & *S.* 276. 2 *Nol. P. L.* 47. Removal from *Bridge* to *Minster*, subject, &c. — Case: The pauper being settled at *Minster*, and having been married several years, and having had seven children, a few days before *Michaelmas*, 1808, was hired as a bailiff by one *Parker*, who had a farm at *Bishopsbourne*, and resided great part of the year about three miles distant. The terms of the agreement made between the pauper and his master were as follows: the pauper was to have 10*s.* *per* week for wages: was to be allowed by his master pork at 5*s.* *per* score, and grist at 4*s.* *per* bushel, for the use of his family, these prices being lower than the general prices. His master was to find him a house, *and was either to furnish him with two cows, or the pauper was to be at liberty to hire two, and feed them on his master's farm.* The pauper went into the service of *Parker* under the said agreement at *Michaelmas*, 1808, and continued until *Michaelmas*, 1811, and he and his family lived in the house of his master at *Bishopsbourne*, and occupied the kitchen and two rooms up stairs, and his wife took care of the house. The pauper hired two cows, which fed during the summer in the pastures of his master, and in the winter in his master's straw-yard, with straw that was grown upon his master's lands. The sessions found that the rooms occupied by the pauper and his family, in the house of his master, were not of the yearly value of 10*l.*, but that the pasturage and keep of the cows, upon the lands of his master, were above that yearly value. — After argument, Ld. *Ellenborough* C. J. said, Here the pauper had a profit issuing out of

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the land to be taken *in loco certo*, which has been adjudged by the cases to be a tenement. The distinction between the occupation of a servant in the house of his master and this, has been adverted to, and the argument, as it seemed to me, has been properly answered, that the apartments of the servant are only as an appendage of the service, they are allotted to him for the more convenient performance of the service, which is the principal thing. Here it is stated that the pauper hired two cows; and that they were kept on the land of the master during the summer months; and it does not appear that this was connected with the service, or that it was necessary for the convenient performance of it, that he should have the two cows. In this respect, therefore, this case may be distinguished from that of servants having apartments in the houses of their master for the better discharge of their duties to their masters. The case now before the Court falls within those which have been decided, particularly the case of *Rex* v. *Melkridge*, (1 *T. R.* 598.) the only difference being, that there he was the servant of many persons, here he is the servant of one only; still the compensation for the tenement in both is the same, namely, the service of the pauper; which the Court held to be equivalent to his paying rent. The other cases of *Rex* v. *Tolpuddle*, and *Rex* v. *Piddletrenthide* are decisive that this interest was a tenement. — *Le Blanc* J. If this case depended upon any consideration involving the value of the apartments or lodging which the pauper occupied in the house of the master, I should not think the case of *Rex* v. *Melkridge* an authority that called upon us to decide in favour of the settlement; but it is stated that the yearly value of the pasturage, independently of the house in which the pauper resided, was upwards of 10*l.* That being so, the cases which have been determined have held, that whether the pauper pay in service or in money, it shall be a coming to settle on a tenement. In this case, if the pauper's occupation of the tenement, was necessarily connected with the service of the master, as in the case of occupying apartments in the house of the master, I should have no hesitation in saying that that would not have conferred a settlement, although of a greater yearly value than 10*l.*, because the occupation would have been necessary for the performance of the service, for which the master might allot what apartments he pleased. In like manner, if the master had allotted to the pauper so much milk a-day, I should have thought the pauper would not have gained a settlement. But in the present case the pauper has a distinct interest in the pasturage of the two cows unconnected with his service to the master's dairy; and this liberty of taking the profits out of land, is found to be of greater value than 10*l.* I do not know therefore how to distinguish this from the cases already decided. — *Bayley* J. Here something is given to the servant unconnected with the service. It is the same thing as if the servant had stipulated that as he had a family he must have certain land for his own occupation, and that the master should allow him to become a distinct occupier of land to the value of 10*l.* a-year. If that had been so, there are not wanting cases to shew that it is not necessary that a rent should be paid in money, or indeed that there should be any rent at all, in order to constitute him the

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occupier of a tenement, but a service is quite sufficient. The case of the herdsman, *Rex* v. *Melkridge*, 1 *T. R.* 598., is full to that point. If that be so, what is the present case but that of a servant who stipulates for a profit out of land of more than the yearly value of 10*l.*, for which he is to pay in service. Orders quashed.

A pauper serving a farmer was to have the liberty to feed two cows on his master's farm during a year. They were fed during the summer in the pasture of his master, and in the winter in his straw-yard, with hay grown upon his lands. It was found that the keep of the two cows during the summer months required land worth five guineas annually, and to cut hay sufficient for the winter keep required land of the further annual value of five guineas. Held, that the right to feed the two cows upon the pasture during the summer was the only part of the contract which gave any interest in the land, and that the pauper did not thereby gain a settlement, the sessions having found the annual value of the pasture-feed to be less than 10l.

Rex v. *Inh. of Sutton St. Edmunds, in the county of Lincoln, E.* 4 *Geo.* 4. 1 *B. & C.* 536. 2 *Nol. P. L.* 19. Removal of *Thomas Watson*, his wife and son, from the hamlet of *Leverington Parson Drove*, in the isle of *Ely*, to the hamlet of *Sutton St. Edmunds*, in the county of *Lincoln*. Order confirmed, subject, &c.—Case: The pauper, *T. Watson*, being settled at *Sutton St. Edmunds*, and having been married several years; at *Lady-day*, 1793, agreed with *John Ulyatt*, a farmer in *Leverington Parson Drove*, to serve him as a confined labourer in husbandry (that is, to work for him and no other person) for a year. The terms of the agreement made between the pauper and his master were as follows. The pauper was to have 18*l.* a-year wages. His master was either to find him two cows, or the pauper was to be at liberty to provide himself with two and feed them on his master's farm during the same year. The pauper went into the service of Mr. *Ulyatt* under the agreement at *Lady-day*, 1793, and continued therein till *Lady-day*, 1797, under contracts to the same effect. During the first three years of such servitude, the pauper lived in a house on his master's farm in *Wisbeach High Fen*, and the last year of such service, in a cottage at *Leverington Parson Drove*. The occupation of the cottage was incidental to the service of the pauper, who was discharged from it at the same time that he left his service. The pauper bought one cow, and his master found him another, both of which were fed during the summer in the pasture of his master, and in the winter, were kept in the straw-yard of his master, and fed with hay grown upon the master's lands. The pauper had the exclusive use and advantage of such cows. If the pauper had not had such cows kept for him on his master's farm, he would have had more wages and at the time he left Mr. *Ulyatt*'s service in 1797, he took his cow with him. Evidence was given to the Court, that the keep of the two cows during the summer months would require two acres and a half of land, on which they were fed; and that such acres were worth together annually, 5*l.* 5*s.*; and that to cut hay sufficient for the winter keep, would require two acres and a half more of such land of the annual value of 5*l.* 5*l.*; and that the summer feed, and winter keep with hay for the two cows on such farm, were of the annual value of 10*l.* 10*s*. The Court of quarter sessions were of opinion, that the keeping and feeding of the cows under the above circumstances did not constitute such a tenement as gave the pauper a settlement at *Leverington Parson Drove*, and therefore confirmed the order of removal.—In the course of the argument *Bayley* J. referred to *Rex* v. *Oswald Twissell*, *M. T.* 1818, in which case the pauper rented, *inter alia*, the milk of a cow to be kept by the owner; her keep made up the necessary value, 10*l.*, and she was in fact pasture-fed; but it was held, that as it did not appear to have been made matter of bargain that she should be pasture-fed, hiring her milk was not necessarily taking a tenement, and the order of sessions

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allowing the settlement was quashed. — *Holroyd* J. The sessions have not found that the right of feeding the two cows on the land was of the annual value of 10*l.* — *Abbott* C. J. It has been settled, in several cases, that the liberty to take the profits of land by the mouths of cattle is a tenement, within the meaning of stat. 13 & 14 *Car.* 2.; but the case of *Rex* v. *Oswald Twissell* is an authority to shew that the contract must apply to *growing produce*, and that a contract partly for growing produce and partly for hay, is insufficient to give a settlement. The contract in this case is not very distinguishable from that in *Rex* v. *Minster*, although it is to be observed, however, that no question was raised in that case as to the manner in which the cattle were to be fed. The question was treated, both by the bar and the bench, as if they were to feed upon the growing produce, and that the pauper acquired a right to the profits of the land itself. — *Le Blanc* J. says, "the liberty of taking the profits out of land is found to be of greater value than 10*l.*" It was a point conceded in that case, that the mode of feeding was sufficient to give a settlement. Here the distinction is pointed out, and according to the case of *Rex* v. *Oswald Twissell*, the contract must be to feed the cattle with the growing produce of the land. Now in this case the master was only bound by the terms of the contract, to feed the cattle during the year, upon the farm, according to the usual mode, that is, to feed them during the summer upon the pasture, and during the winter in the straw-yard. The summer keep upon the pasture is found to be of no greater value than five guineas, and the winter keep, for the reasons already given, cannot be taken into consideration, and that being so, I am of opinion, that the pauper did not gain any settlement in *Leverington Parson Drove.* — *Bayley* J. The party, in order to gain a settlement, must come to settle upon a tenement of the yearly value of 10*l.* The right to take the herbage and produce of the soil is a right to the profits of the land, and constitutes a tenement. But the contract must be for taking the growing produce of the land. Now here it is stated, that by the terms of the contract, the pauper was to be at liberty to feed the cows on his master's farm during the year. By that contract the matter would be bound to feed the cows during the whole year in the usual mode, *viz.* to feed them on the pastures during the summer, and in in the straw-yard during the winter. The right to feed cattle for a period of the year when they are usually pasture-fed, by eating the growing produce of the land, is a tenement; but the right to feed cattle by dry food not necessarily a part of the produce of any particular land, is not a tenement. That point was not taken in *Rex* v. *Minster*. *Rex* v. *Oswald Twissell*, is an authority expressly to shew that the value of the pasturage can alone be taken into consideration in estimating the value of the tenement occupied by a pauper under such a contract as this. Here, the value of the pasturage alone amounted only to 5*l.* 5*s.*, and consequently the pauper had not a tenement of the annual value of 10*l.* — *Holroyd* J. I am of opinion that the pauper gained no settlement by this contract. Agreements for liberty to take the growing produce of land by the mouths of cattle, have been considered

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as equivalent to a demise of the land, at a rent equal to the profits of the land, and to constitute an incorporeal tenement. The party entitled to the privilege is considered for this purpose as the occupier of land of that value. The authorities establish that where such a contract confers a right of pasturage of the annual value of 10*l.*, a settlement is gained. But a contract to feed cattle with hay in a straw-yard, gives no right to the occupation of land from which the hay is cut. It is rather a personal contract for the sale of so much hay as shall be necessary for the sustenance of the cattle. Here then the pauper had an interest in that land alone on which his cows were depastured during the summer, and the annual value of that was only 5*l.* 5*s.* and insufficient. For these reasons I am of opinion that the pauper did not gain any settlement in *Leverington Parson Drove.* Order of sessions affirmed.

By one entire contract, a master agreed to give his servant 20*l.* a-year, a cottage to live in, and the agistments of one cow for his own services; and the sum of 28*l.* and the agistment of another cow in consideration of his lodging and maintaining in the cottage two of the master's labourers. The annual value of the lands on which the two cows were depastured exceeded 10*l.*, but the annual value of land sufficient to depasture one cow only would have been less than 10*l.*: Held, that the pauper gained a settlement by the right to agist the two cows.

Rex v. *Inh. of Cherry Willingham, E.* 4 *Geo.* 4. 1 *B.* & *C.* 626. 2 *Nol. P.L.* 48. Removal of *Matthew Bolding*, his wife and children, from the parish of *Hougham*, in the county of *Lincoln*, to the parish of *Cherry Willingham*, in the said county. Upon appeal the sessions confirmed the order, subject, &c. — Case: The pauper, *M. Bolding*, had gained a settlement by hiring and service in the parish of *Cherry Willingham*, and was settled there at *May-day*, 1817. The pauper then contracted to become the groundkeeper of *John Hill*, in respect of his farm at *Hougham*. The master, by one entire contract, agreed to give the pauper 20*l.* a-year, a cottage to live in, and the agistment and whole profits of one cow for his own services, and the sum of 28*l.*, and the agistment of and whole profits of another cow, in consideration of his lodging and maintaining in the cottage two of his (*Hill's*) labourers. The pauper resided under these terms in *Hougham*, during the year, taking the whole profits of the cows, receiving his wages, the allowance of 28*l.*, and maintaining the two servants. The annual value of the lands on which the two cows were depastured, exceeded 10*l.*; but the land necessary for one cow only, would not be of that value; (that is to say) the annual value of the agistment of two cows upon the land in question would be worth 10*l.* a-year; but of one cow, would not be 10*l.* a-year. The case having been argued, *Cur. Adv. vult.*—*Abbott* C. J. afterwards delivered the judgment of the Court. We have considered of this case, and we are of opinion that the pauper acquired a settlement in *Hougham;* and, consequently, that the order for his removal from that parish, and the order for confirmation are wrong, and that the rule for quashing them must be made absolute. The tenement in question is the pasturage of two cows. It is found that the annual value of the land whereon the two were depastured, exceeded 10*l.*; that the annnal value of the agistment of the two would be worth 10*l.*, but of one, then not 10*l.* It was therefore contended in support of the orders, that although the pasturage of one of the cows must be considered as a tenement upon the authority of decided cases, yet that the pasturage of the other was not a tenement, and this upon a difference in the terms of the contract as set forth in the case. It is found that the contract was an entire contract, that the master agreed to give the pauper 20*l.* a-year, a cottage to live in, and the agistment

and whole profits of one cow for his own services; and the sum of 28*l.*, and the agistment and whole profits of another cow, in consideration of the pauper's lodging and maintaining at the cottage, two of the master's labourers. The question arose upon the cow thus last mentioned. Now, by the terms of this contract, the pauper does not engage to employ the milk of the latter cow in the maintenance of the labourers: he might, if milk formed a part of their diet, as it may be presumed to have done, have given the milk of the other cow, or he might have procured milk for them elsewhere, and might have sold or otherwise disposed of the milk of both the cows provided by his master. So that we cannot say the milk was given or appropriated for the maintenance of the labourers; but must say, that it was given in consideration of the maintenance of the labourers. And the consideration given or paid for a tenement, is wholly immaterial on a question of settlement, if the yearly value be 10*l.* Whether the consideration be paid in money, or by services rendered, or by any other matter, beneficial to the party receiving, was of no importance at the time in question, which was before the stat. 59 *Geo.* 3. *c.* 50. We therefore think that the difference, as it was called in the terms of this contract, does not lead to any legal distinction which can justify us in saying, that the agistment of the latter cow was not a tenement. Both orders quashed.

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Rex v. *Bardwell*, *T.* 4 *Geo.* 4. 2 *B.* & *C.* 161. 2 *Nol. P. L.* 20. Upon an appeal against an order of two justices for the removal of *Peter Firman* from the parish of *Bardwell*, in the county of *Suffolk*, to the parish of *Ixworth*, in the same county, the order was quashed by the sessions, subject, &c. Case: About 24 years ago, the pauper, a married man, was hired for a year by Mr. *S.* of *Ixworth*, as his shepherd; he was to have a house and garden rent free, seven shillings a-week, and the going of 30 sheep with his master's flock as wages. The pauper lived for two years with Mr. *S.* in the parish of *Ixworth*, at these wages, during all which time the 30 sheep went with his master's flock on the farm, the whole of which was situated in that parish. The feed of the 30 sheep was worth 16*l.* a-year, exclusive of the house and garden. If the pauper had not been allowed to keep the sheep he must have had more wages. *Storks*, in support of the order of sessions, was stopped by the Court. *Dover contra* cited *Rex* v. *Minster*, 3 *M.* & *S.* 276. [*Bayley* J. Is there any case, except *Rex* v. *Minster*, where the pauper gained a settlement by renting a tenement without residing upon any part of it?] *Rex* v. *Houghton le Spring* (1 *East*, 247.), and *Rex* v. *Sowton Burr. S. C.* 125.—*Bayley* J. This case certainly comes very near *Rex* v. *Minster*, but that is open to much observation. It was there conceded that the right to have the cows fed upon the master's farm was a tenement, and the only question discussed and decided was, the nature of the consideration given for that tenement. In *Rex* v. *Oswald Twissell*, decided in *Mich.* term, 1818, it was held, that unless it was stipulated in the original bargain, that the cows should be pasture-fed, a settlement would not be gained, and that decision was recognised and acted upon in *Rex* v. *Sutton St. Edmunds*, 1 *B.* & *C.* 536. In the present case it is probable that the sheep were fed upon the growing produce, to the value of 10*l.* *per* annum; but as it was not any

The pauper was hired for a year as a shepherd: he was to have a house and garden rent-free, 7*s.* a week, and the going of thirty sheep with his master's flock, as wages. He served for two years at those wages in the parish of *I.*, during all which time the sheep went on his master's farm, the whole of which was situated in that parish. The feed of the sheep was worth 16l. *per* annum: Held, that this did not confer a settlement, it not being any part of the bargain that the sheep should be pasture-fed. Semble, That in order to gain a settlement by renting a tene-

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ment, the pauper must reside upon some part of it.

part of the original bargain that they should be so fed, it falls expressly within those two cases, and is not sufficient to confer a settlement. There is another point also which makes it extremely doubtful whether the pauper could have gained a settlement, had the going of the sheep constituted a tenement of 10*l.* annual value. The house and garden being merely for the more convenient performance of the pauper's service as shepherd, must be laid out of consideration; he did not occupy them as a tenant, but as a servant. The stat. 13 & 14 *Car.* 2. *c.* 12. requires that the party should come to *settle* on the tenement: now that means to reside. In all the cases determined on this part of the act the pauper resided upon some part of that which constituted the tenement. There are cases where a party, from kindness, was allowed to reside in a house rent-free, that was held to be a tenement. But here the pauper had no residence but in the character of a servant: the house continued the master's, and the pauper was, with respect to this point, in the same situation as if he had lived in a room in his master's house. The two cases referred to differ from this, for in each of them the pauper had property of his own in the parish, and was on that ground held to be irremoveable. *Rex* v. *Denbigh*, (5 *East*, 333.), also, is distinguishable, for there the pauper lived in the toll-house, as his own residence; and it would have been such a tenement as would confer a settlement, but for an act of parliament (*a*) which says, that no gatekeeper shall gain a settlement by renting the tolls and residing in the toll-house. For these reasons I think that the pauper did not gain a settlement in *Ixworth*, and that the order of sessions must be confirmed. —*Best* J. (*b*) In *Rex* v. *Minster* the principal point was given up, *viz.* whether the feeding of the cows constituted a tenement; but the Court there thought that a house occupied by the pauper, merely as a servant, did not constitute a tenement. Here there was not any agreement that the sheep should be fed on growing produce; this case, therefore, falls within *Rex* v. *Oswald Twissell*, and *Rex* v. *Sutton St. Edmunds*. I agree, also, that the pauper, to gain a settlement, must reside upon some part of the tenement, I am not, indeed, aware of any express decision to that effect; but looking at the words of the statute it appears, that merely having a tenement of a certain value will not do, the pauper must come to *settle* upon it. The legislature could not have intended mere residence as a servant, but that the party should gain credit and reside as a tenant. If that be so, the pauper, on this ground also, gained no settlement in *Ixworth*. Order of sessions confirmed. (*c*.)

(*a*) 13 *G.* 3. *c.* 84. § 56. now see stat. 3 *G.* 4. *c.* 126. § 51. the new Turnpike act. Vol. II. tit. Highways, (Turnpike.)

(*b*) *Holroyd* J. was sitting at the O. B.

(*c*) The necessity of the pauper's residence upon some part of the tenement does not appear to have been much considered in former cases. In most of them indeed, it does appear that he so resided, but that was not insisted upon as necessary. Thus in *Rex* v. *Butley*, *Burr. S. C.* 107., the pauper rented a house in which he resided; but *Page* and *Probyn* Js. seem to rely upon his residence being *in the parish*, and not upon its being on the tenement. So in *Rex* v. *Shenston*, *Burr. S. C.* 474., Ld. *Mansfield* speaks of a residence in the *parish* as necessary. *Dennison* and *Wilmot* Js. advert to the fact of the pauper's residence

Rex v. *The Inhab. of Benneworth, E.* 5 *Geo.* 4. 2 *B. & C.* 775. 2 *Nol. P.L.* 18. Removal of *James Fletcher*, his wife and family, from the parish of *Benneworth*, in the parts of *Lindsey* and county of *Lincoln*, to the parish of *Calcethorpe* in the said parts and county; the sessions quashed the order, subject, &c. — Case: In 1803, the pauper, *James Fletcher* (then a married man) was hired by yearly hiring as a confined labourer in husbandry with Mr. *Day* of *Calcethorpe*, farmer. The pauper had, according to agreement, a house and garden, and a rood of potatoe land, and the keep of a cow on his master's land. The cow was instead of so much money for wages. The pauper remained in Mr. *Day*'s service eleven years, during which time, namely, in the year 1813, the pauper's cow failed in milk, on which account, through the kindness of his master, and not in consequence of *any bargain*, the pauper had in the place of the former cow, two heifers kept for him by his master on his master's land for about eleven months. The potatoe land and keep of the two heifers were together of the value of 10*l. per annum* and upwards. But the potatoe land and keep of one cow were below that value. On leaving Mr. *Day*, the pauper went to live as a confined labourer with Mr. *Briggs* at *Scamblesby*, with whom he remained five years. For the last three years of the pauper's service with Mr. *Briggs*, the pauper was relieved in *Scamblesby* by the parish of *Donnington on Baine*. At the expiration of the pauper's service with Mr. *Briggs*, the parish of *Donnington on Baine* took him and his family to their parish, and put them into a cottage in the parish of *Benneworth*, an adjoining parish, where they continued to relieve them till some time in the year 1822. The pauper then became chargeable to the parish of *Benneworth*. The case having been fully argued. *Cur. adv. vult.* Afterwards *Abbott* C.J. delivered the judgment of the Court. — This case was argued before us in the course of the present term. We are all strongly impressed with the inconvenience of considering a settlement to be gained under circumstances like the present; and under that

A pauper was hired for a year, and had by agreement a house and garden, a rood of potatoe land, and the keep of a cow on his master's land. After the pauper had served ten years, his cow failing in milk, the pauper had in lieu of the cow two heifers kept for him, through the kindness of his master, and not in consequence of any bargain. The potatoe land and the keep of two heifers was of the annual value of 10*l.*, but the potatoe land and the keep of the one cow was of less annual value than 10*l.*: Held, that the pauper, by having the potatoe land and the

being on the tenement; the latter of them observes, " It is settled that the residence upon a part of the different takings is sufficient to gain a man a settlement in the parish where he resides. In *Rex* v. *Llandverras, Burr. S. C.* 571, the pauper did in fact reside upon a part of the tenement; but *Aston* J. says, " The pauper need not reside upon any part of the tenement he takes; it is enough if he resides in the parish." It does not, however, appear that the rest of the Court (Ld. *Mansfield* C. J., *Yates* and *Hewitt* Js.) expressed any such opinion. In *Rex* v. *Old Alresford*, 1 *T. R.* 358.; *Rex* v. *Stoke*, 2 *T. R.* 451.; *Rex* v. *Puddletrenthide*, 3 *T. R.* 772.; *Rex* v. *Brampton*, 4 *T. R.* 348.; *Rex* v. *Tolpuddle*, 4 *T. R.* 671.: the point does not appear to have been noticed; in the two former the pauper did reside upon a part of the thing taken; in the three latter it does not appear whether the fact was so or not. In *Rex* v. *Knighton*, 2 *T. R.* 48, the pauper did not reside in the *parish* where the tenement was situated; and *Ashhurst* J., who delivered the judgment of the Court, says, " There must be a residence either on the premises, or at least in the parish where some part of the premises lies." Throughout this series of cases it appears that the principal discussion was respecting the nature of the thing taken, and its value; the meaning of the expression " shall come to settle," in stat. 13 & 14 *Car.* c. 12., was lost sight of; and perhaps it was not strictly attended to in those cases where it was held that various takings in different parishes confer a settlement in that parish where the pauper resides, if the aggregate value be 10*l.* per annum.

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heifers, *before* the passing of the stat. 59 G.3. c.50., gained a settlement: but, *semble*, that by having the potatoe land and the keep of the two heifers after the passing of the 59 G. 3. c. 50., he would not have gained a settlement.

impression, we thought it right to consider the subject before we delivered our judgment. We have done so; but we find the law so firmly established, that a perception of the profits of land by the mouths of cattle, is a tenement, within the meaning of stat. 13 & 14 *Car.* 2. *c.*12., and that an occupation of a tenement of the yearly value of 10*l.* will give a settlement, whether the rent be paid in money or in labour; and even if the occupation be gratuitous and no rent paid; that we do not think ourselves at liberty to unsettle this doctrine; and, consequently, we are of opinion, that a settlement was gained in *Calcethorpe*, and that the present rule must be made absolute. — The inconvenience is retrospective only: the law, so far as it regards a case of this kind being altered by the statute 59 *Geo.* 3. *c.* 50. So that no person need now abstain from such an act as is disclosed in this case, through the fear of bringing a burthen upon his parish. Order of sessions quashed.

Where a waiter at an hotel had the tap or privilege of selling malt liquors there, and the use of the cellar for holding the liquors, which had a separate entrance and of which he kept the key and paid for his situation of waiter, and for the tap and cellar the yearly sum of 60l.: held that this was not such an occupation of the cellar as to confer a settlement.

Rex v. *Seacroft*, *E.* 54 *Geo.*3. 2 *M.* & *S.* 472. 2 *Nol. P. L.* 27. Removal from *Leeds* to *Seacroft*: Order confirmed, subject, &c. — Case: The husband of the pauper while renting and occupying a house in *Leeds* of the yearly value of 6*l.*, engaged himself as waiter at the hotel in *Leeds*; and at the same time had the tap, that is, the privilege of selling malt liquors there; and for the convenience of holding his liquors, had the use of the cellar belonging to the hotel, which had a distinct and separate entrance, and of which he kept the key. He paid in the whole for his situation as waiter, and for the tap and cellar, the yearly sum of 60*l.* The annual value of the cellar independently of the privilege of the tap, was upwards of 6*l.* The Court said, on the first point contended for, (*viz.* that the Court might presume from the facts stated, that he was engaged as waiter by the year,) that the sessions and not this Court were the proper forum to draw the presumption of a hiring for a year, which they had not done: 2dly, That there did not appear to be any taking of the cellar as a tenant, but the use of it was only a privilege allowed him in respect of the principal thing, which was the hiring himself as a waiter. That before a party can be said to come to settle in a tenement, there must be something like a taking of it as a tenant. Order of sessions confirmed.

Occupation of premises by servant for the better performance of his service, and not in the character of tenant.

Rex v. *Kelstern*, *E.* 56 *Geo.* 3. 5 *M.* & *S.* 136. 2 *Nol. P. L.* 45, 46. Where the pauper, a married man, agreed to serve *S.* for a year as a labourer, and was to have 20*l.* a year, a *house and garden*, a piece of land for potatoes, the milk of a cow, and feeding of a pig, which were to run on a neighbouring field: and under this agreement the pauper served and had the exclusive occupation of the house for himself and family, the house being about 100 yards from the house of *S.*, and being necessary for the performance of his service, and if he had not had it he would have had more wages: the Court of K. B. held, that this was not a coming to settle on a tenement to confer a settlement. — Ld. *Ellenborough* C. J. I own I have no doubt in this case, that the only occupation of this house, was the occupation of the master and not of the servant, whom the master placed there for the mutual convenience of both parties. The master's house was about 100 yards distant from it, and the servant had it thrown into the bargain in cumu-

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lation of wages. This may be compared to rooms allotted to a coachman over the stables of his master, or to an out-house, where being a family-man it is more convenient that he should be out of the dwelling-house; but that is nothing more than the occupation of the master. So here I cannot see that the occupation goes farther. In *Rex* v. *Melkridge*, the question did not turn upon whether it was an occupation by the herdsman or the commoners who employed him, for it did not appear that the commoners ever had an occupation in any way, but the herdsman had it exclusively. At present, it seems to me to be incontestably plain that this was nothing more than the occupation of the master by the servant. Therefore the house cannot go to form a part of the tenement so as to make up the value of 10*l.* a year. — *Bayley* J. I take the distinction as laid down in *Rex* v. *Minster*, (*ante*, p. 554.) to be this, that if the occupation be unconnected with the service, it will confer a settlement; but if it be necessarily connected with the service, as if it be necessary for the due performance of the service, it shall not confer a settlement. Now from this case I collect that the occupation of the house was necessary for the performance of the service; therefore it must be taken as the occupation of the master, and not of the servant.

Rex v. *Cheshunt*, *E.* 58 *Geo.* 3. 1 *B.* & *A.* 473. 2 *Nol. P.L.* 47. A pauper employed as a labourer by the Board of Ordnance, having previously occupied a house at an annual rent of 7*l.*, which was then purchased by the board, still continued to reside in part of the premises at a weekly rent of 2*s.* which was deducted out of his wages, and during such last occupation he also occupied a shop (the shop and house together being of the annual value of 10*l.*) and upon his dismissal from his employment he gave up possession of the house as required: the Court held that his last occupation of the house was not as tenant, but as servant, and that no settlement was thereby gained. Ld. *Ellenborough* C. J. In this case it seems to me that the party occupied this house as a servant only, and not in the character of a tenant. It is like the case of a coachman, who frequently occupies a room over the stables, but such occupation is not within the meaning of 13 & 14 *C.* 2. (*Vide Rex* v. *Stockton and others*, *tit.* Burglary, § I.) The pauper here was divested of the tenement as soon as his service terminated. He quitted the possession reluctantly, and was succeeded by the person who succeeded him in his employment under the Board of Ordnance. All this clearly shews that he was only entitled to hold it during and for the more convenient performance of his service. If the Court should hold, in this and similar cases, that the legal relation of landlord and tenant subsisted, it would become necessary to turn such persons out of possession by the regular proceedings in ejectment, and every gentleman having twenty or thirty cottages in which his labourers resided would be compelled on any change of their service to have recourse to such means. This would be productive of the most serious inconvenience. Upon the whole view of this case, I think it plainly appears that the relation of landlord and tenant never did subsist here, and unless that were so, this was not an occupation within 13 & 14 *C.* 2. and no settlement

R. v. Cheshunt. could be gained by it.—*Bayley* J. I am of the same opinion. The case of *The King* v. *Minster* only decided that the occupation of a tenement which was wholly unconnected with the service would confer a settlement, but that the occupation of one connected with the service would not. In this case the tenement is connected with the pauper's service under the Board of Ordnance.

Rex v. *Croft*, *M.* 60 *Geo.* 3. 3 *B.* & *A.* 171. 2 *Nol. P. L.* 6. Removal from *Croft* to *Stoney Stanton*, both in *Leicestershire*. The sessions on appeal discharged the order, and stated the following case: The pauper was born in the appellants' parish, but was afterwards bound apprentice to, and served *Edward Stephens*, in *Croft*, for several years. The respondents, in answer to this, produced a certificate from *Earl Shilton*, acknowledging the father of *Edward Stephens*, *Elizabeth*, his wife, and *Francis*, their child, to belong to that parish. The appellants then proved, that the father of *Stephens*, after he came to *Croft*, under the certificate, occupied a house and homestead in *Croft*, and, at the same time, some land in *Marston*, and that in one year, while he was in the occupation of the said premises, he agisted three cows for two or three months in the fields of his landlord. No positive contract for the agistment was proved. The sessions determined that the three cows were agisted for above forty days in the year, and that the average value of the agistment, reckoned by the year, added to the value of the other tenements, made the whole above 10*l.* *per annum*; but, if the value of the agistment, taken only for the time that the cows were on the land, were to be added, it would make the whole less than 10*l.*—After argument, *Abbott* C. J. in delivering the opinion of the Court said, "Upon the authorities there can be no doubt that the facts here stated must be deemed to be a coming to settle upon a tenement of the yearly value of 10*l.*, within the meaning of the stat. 13 & 14 *C.* 2. *c.* 12. The only doubt was, whether a difference of construction might prevail upon the certificate act, the 9 & 10 *W.* 3. *c.* 11., which is expressed in somewhat more precise terms, *viz.* "*bonâ fide* take a lease of a tenement of the value of 10*l.*" It is obvious, however, that in construing these words, reference must be had to the former statute, to supply the word "yearly," which is wanting in this statute; and in like manner, the words of the second branch of this clause, "execute some annual office in such parish, being legally placed in such office," have been construed, with reference to the stat. 3 & 4 *W.* & *M.* *c.* 11. § 6. to require a service of the office for an entire year. *Rex* v. *Inhab. of Tittleworth*, *Burr.* S. C. 238. No case has been found in which the stat. 9 & 10 *W.* 3. has received a different construction from the stat. 13 & 14 *C.* 2., as to the nature of the tenement, or of the taking thereof. On the contrary, it has been decided, that a lease at will is a lease within the certificate act, *Stra.* 502. And in the case of *The King* v. *Inhab. of Shenston*, *Burr. S. C.* 474. Ld. *Mansfield* says, the two acts are to be considered together, being *in pari materia*. Order of sessions confirmed.

A licence for a year to use part of the machinery of a mill, will not confer a settlement.

Rex v. *Dodderhill*, *H.* 40 *Geo.* 3. 8 *T. R.* 449. 2 *Bott*, 106. 2 *Nol. P. L.* 24. Removal from *Ipsley* to *Dodderhill*, and confirmed by the sessions. The pauper *Barnet* went in 1791 to reside at *Dodderhill*, where he continued three years: during that time, being by trade a needle-maker, he worked for *W. Webb* in that trade, at six pointing places in his mill, and afterwards *W.* not having, in general, use for more than four of them, *B.* rented of *W.* two of the said pointing places for more than one year, at the yearly rent of 16*l.*, but *Barnet* was to do all *W.*'s work in preference to that of any other person, although to do it it might be necessary to use all the six pointing places; and *B.* was paid by the piece for all the work he did for *Webb*. No particular places were let to *B.*, but by his contract with *W.* he might have the use of any two he pleased; but work or no work, *W.* was entitled to his rent of 16*l.* a-year for the two places. The mill belonged to *W.* The pointing places are frames of wood, which support the spindles on which grinding stones turn, which are moved by means of leathern straps communicating with the great wheel of the mill, which is turned by water. The pointing places are placed on the floor of the room, and at each of them a man sits; and the needles are pointed by being pressed against the grinding stones. The Court were of opinion, that there was no pretence for calling this agreement to work in the mill, the taking of a tenement.

Renting machinery.

Renting pointing places in a mill, will not give a settlement; the pointing places not being fixed to the floor of the mill.

Rex v. *Tardebigg*, *T.* 41 *Geo.* 3. 1 *East*, 528. 2 *Bott*, 107. 2 *Nol. P. L.* 25. Removal from *Tardebigg* to *Alvechurch*, and quashed by the sessions.—Case: The pauper's husband took three runners for scouring needles in a mill belonging to *Milward* in *Tardebigg*, and a packeting room at 1*s.* a packet for every packet scoured thereat. He took afterwards at different times, other runners and another packeting room of another person. The runners were a part of the machinery, fixed to the floor of the mill with screws. *Westwood* (the pauper's husband) and his family slept in this mill for two years. One floor of a mill will contain several runners. He had the exclusive right to the use of these runners and the packeting rooms. He also took a cottage of *Milward*, and the rent was altogether more than 10*l.* *per ann.* — *Per* Ld. *Kenyon* C. J. There is no distinguishing this case from *Rex* v. *Dodderhill*, (*supra.*) A runner is no more a tenement than a pointing place is so. It might as well be said to be a taking of a tenement if a man contracted to pound in a certain mortar, or to use a particular grinding stone in a mill. It is not in effect a taking of a part of the mill as a tenant, but a licence to use a particular part of the machinery of it for the purpose of manufacture, and for no other purpose.—*Lawrence* J. observed, that *Rex* v. *Whitechapel* (*post*, p. 576.) did not apply here, for here the particular value of the runner is found, which is necessary to be taken into the account to make up the 10*l.* a-year, and that not being a tenement cannot confer a settlement. That besides, it was not even stated that the runner was in the packeting room which was appropriated to the pauper's use.

So, runners for scouring needles, though they be screwed to the floor of the mill.

Rex v. *Mellor*, *H.* 42 *Geo.* 3. 2 *East*, 189. 2 *Bott*, 108. 2 *Nol. P. L.* 25, 26. Removal from *Bramhall*, in the county of *Chester*, to *Mellor*, in the county of *Derby*, and confirmed by the sessions.

So, a standing place for a carding machine.

Renting machinery.

R. v. Mellor.

The pauper being legally settled at *M.* took a house in *Stockport*, of the value of *5l.* a-year: and he also took from the owner of a mill in *S.*, worked by a steam engine, *a standing place in a room for a carding machine* of his own, which was worked by the machinery of the engine, and fastened to the floor and the roof of the room. He was to pay his landlord *20l.* a-year, and agreed that each should give the other three months' notice to quit. He had a key to the room, (as had other persons using the room in a similar way,) and the owner had a master key. It was urged against the order of sessions, that the only thing let was *the place in the room* where the machine was to be fixed: and that, therefore, the taking was of that part of the tenement itself, and not of the machinery itself, as in former cases. — But the Court were of opinion, that this was only a licence to use the machinery of the mill, and not a letting of any part of the mill itself, and that, therefore, no settlement could be gained by it.

The master of a charity-school, who was removable from his office at pleasure, resided for seven years, rent-free, in a house of the annual value of 10l., where other parish schoolmasters had resided before. Part of the house he underlet to the parish at an annual rent: Held, that this was a coming to settle upon a tenement of the value of 10l. per annum within the meaning of the 13 & 14 Car. 2. and that the pauper thereby gained a settlement.

Rex v. *Inhab. of Lakenheath*, *E.* 4 *Geo.* 4. 1 *B. & C.* 531. 2 *Nol. P. L.* 43. Upon an appeal against an order of two justices, whereby *H. Bailey*, his wife and family, were removed from the parish of *Chippenham* to the parish of *Lakenheath*, the court of quarter sessions confirmed the order, subject, &c. Case: The pauper was settled by birth in the parish of *Lakenheath*, but he had resided the last seven years in *Chippenham*, under the following circumstances: *Edward Russel*, Earl of *Orford*, by his will, dated the 2d *March*, 1726, charged his manor of *Chippenham*, and all his lands and hereditaments in *Chippenham*, with the payment of a rent-charge of *20l. per* annum, to be paid to the trustees therein named, their heirs and assigns for ever, upon trust to be by them paid yearly unto a person to be from time to time nominated by the person who, for the time being, should be entitled to the mannor of *Chippenham*, to officiate as a schoolmaster in the parish of *Chippenham*, for the teaching of the children of the parish, for no other reward than the said annual sum of *20l.*, which was to be paid to the schoolmaster, without any allowance or deduction for taxes or otherwise, with a proviso that the respective schoolmasters should, from time to time, be removeable, and others, from time to time, made choice of and nominated in their room at the will and pleasure of the person, who, for the time being, should be entitled to the immediate possession of the manor of *Chippenham*. Upon the death of a former schoolmaster, about seven years ago, the pauper was appointed to the office. He resided at *Chippenham* during the seven years, and until the present order (rent free), in the house wherein his predecessors, the schoolmasters, had resided before him, and he received, out of the rents of the *Chippenham* manor and estates, the annual sum of *20l.* The house and the garden attached to it were of the value of *10l.* per annum, part of which he underlet, during the seven years to the parish, at the annual rent of *2l. 2s.*—After argument, *per Abbott* C. J. This case must be governed by the decision in *Rex* v. *Fillongley*, 1 *T. R.* 458. There the pauper rented a house of the value of *8l. per* annum, and resided in it three years. With respect to that house there was no question; but about the same time that he took that house his brother gave him a close in an adjoining parish, containing about four acres, saying, "I'll give you a close to enjoy as long as I please, and to

take again when I please, and you shall pay nothing for it." The Court held, that the occupation of the latter close was a coming to settle upon a tenement within the statute, and the two tenements being of the value of 10*l.* *per* annum, that he gained a settlement. *Ashhurst* J. says, "If the party comes to reside upon a tenement of 10*l.* a-year, he cannot be removed, and then he gains a settlement by forty days' residence." And *Buller* J. considered that the pauper was a tenant at will. This is not like the case of *Rex* v. *Cheshunt*, where the pauper occupied as a servant. In such a case, the occupation is that of a master. Here it is found as a fact, that the pauper occupied a house and tenement, of the value of 10*l.* *per* annum, and it is clear that he occupied in his own right, for he actually underlet part to the parish. I am, therefore, of opinion, that the pauper gained a settlement in the parish of *Chippenham*, and that the order of sessions must be quashed. — *Bayley* J. The occupation of a tenement of the value of 10*l.* *per* annum for 40 days, although no rent be actually paid, is a coming to settle upon a tenement within the statute, so as to make the party irremovable. Here, indeed, the pauper might be considered to have given his services partly in consideration of his being permitted to reside in the house, and in that case, the services so rendered would be something in the nature of a rent. At all events, he came to occupy as tenant at will, with a view to permanent residence, and that is a coming to settle upon a tenement within the meaning of the statute. — *Holroyd* J. I think that the school master was tenant at will of this house. The legal possession of the house was in him, and not in the lord or receiver of the manor. In the case of a master and servant, the servant may merely have the use of the house as servant, but in that case the possession is that of the master; but here the school master actually underlet a part of the house to the parish, he therefore enjoyed the house as his own, and not as the servant of the lord or receiver of the manor. That being so, I am of opinion, that he gained a settlement in *Chippenham*, and the order of sessions must therefore be quashed. Order of sessions quashed.

R. v. Lakenheath.

It is confidently hoped, that further litigation on the nature of the tenement necessary to confer a settlement, may, in a great measure, be prevented by the provisions of stat. 59 *Geo.* 3. *c.* 50, (*ante*, p. 539.) by which it is enacted, that after *July* 2d, 1819, "No person shall acquire a settlement in any parish or township maintaining its own poor in *England*, by or by reason of his or her dwelling for forty days in any tenement rented by such person, unless such tenement shall consist of a house or building within such parish or township, being a separate and distinct dwelling-house or building, or of land within such parish or township, or of both."

59 G. 3. c. 50.

Rex v. *Inhab. of North Collingham*, *E.* 4 *Geo.* 4. 1 *B.* & *C.* 578. 2 *Nol. P. L.* 65. Two justices, by their order, removed *Mary Barks*, the widow of *William Barks*, and her children, from the parish of *North Collingham*, in the county of *Nottingham*, to the parish of *Fulbeck*, in the county of *Lincoln*. Upon appeal, the sessions discharged the order, subject, &c. Case: The pauper's husband, being legally settled in *Fulbeck*, came to reside at *North Collingham*, in the year 1812, where he took and hired a house (being a separate and distinct dwelling-house), with a garden, for

After the passing 59 G. 3. c. 50., the pauper held *together* for a year a house and garden, and paid rent for the same during that period. They

R. v. Inh. of North Collingham.

were taken of different persons at different times. The rent of the house was six guineas. The pauper underlet one room, communicating with the rest of the house by an inner door, and with the yard by an outer door. The rent of the garden was 3l. 15s. per annum, and it was occupied by the pauper himself; Held, that although there was a separate taking of the house and of the land, that this was a tenement within the meaning of 59 G. 3. c. 50.; and, secondly, that, although one of the rooms was underlet, still the house continued to be the separate and distinct dwelling-house of the pauper within the meaning of the statute.

a year, and from year to year, at the annual rent of 6*l*. 6*s*. and he continued to hold and occupy such house and garden, and actually paid the aforesaid yearly rent for the same from the year 1812 up to his death, which happened in *December*, 1821; but, during the last four years of his holding the house, he let to a lodger, at thirty shillings a-year, one of the rooms on the ground floor. The room communicated with the yard appurtenant to the house by an outer door, and with the adjoining rooms of the house by an inner door, of which doors the lodger kept the keys. As there was another outer door to the house, no alteration whatever was made in the house or doors during any part of the period for which *William Barks* was tenant thereof. The room was let unfurnished, and the lodger occupied nothing but the room, and *William Barks* was assessed and rated for the entire house to the poor, the highways, and king's taxes, and paid such assessments during the whole of his tenancy. In the year 1819 (*a*), the pauper *bonâ fide* hired a piece of garden ground in the parish of *North Collingham*, for a year, at the rent of 3*l*. 15*s*., which ground he actually occupied for a year, and paid the said rent, and continued in the occupation thereof up to the time of his death. — After argument, *Abbott* C. J. The question arises on the construction of the statute 59 *Geo*. 3. *c*. 50., which was made for the purpose of restraining the acquisition of settlements by renting tenements. It is a general rule, that acts in *pari materiâ* shall receive a similar construction. Before the passing of the act, a party might gain a settlement by taking various tenements at different times. The question is, whether since the passing of the act the tenement must be taken at one rent, and at the same time. The words are, "that no person shall acquire a settlement in any parish or township maintaining its own poor in *England*, by reason of his or her dwelling for forty days in any tenement rented by such person, unless such tenement shall consist of a house or building within such parish or township, being a separate and distinct dwelling-house or building, or of land within such parish or township, or of both, *bonâ fide* hired by such person, at and for the sum of 10*l*. a year, at the least, for the term of one whole year; nor unless such house or building shall be held, and such land occupied, and the rent for the same actually paid, for the term of one whole year at the least by the person hiring the same." Now by this act it is not sufficient that the hiring should be of a tenement of the value of 10*l*. *per* annum, but the house must be held, and the land occupied, and the rent paid for one whole year, the first question is, whether the pauper held a tenement within the meaning of the statute. Under the former acts a tenement might consist of various parcels taken at various times, and there is nothing in this act to alter the old law in that respect. As to the second question, it is to be observed that a different expression is applied to land and to houses. The house is to be *held*, but the land is to be *occupied*: it was probably intended that a party taking lodgers, properly so called, should not be thereby prevented from gaining a settlement. The question is, Did the pauper *hold* the whole dwelling-house? It is said that the lodger held a

(*a*) This was admitted, in argument, to have been after the 2d of *July*, 1819, e day on which stat. 59 *G*. 3. *c*. 50. received the royal assent.

part distinct from the rest, so that a burglary committed in that part might, in an indictment, be laid to have been in the dwelling-house of the lodger. I think, however, that that proposition is not established by the facts stated. It is said, that putting the key of the inner-door into the hands of the lodger was the same thing as if there was a brick wall between his and the adjoining room. If, indeed, it had been stated that the key was delivered to the lodger for the express purpose of preventing the communication between the different apartments, there would be the more weight in the argument. But the key may have been delivered to him for the purpose of enabling him to enter either way, and if that was the object, then he had not any distinct dwelling-house. I rather infer from the facts stated, that that was the object for which the key was delivered; and if so, then the pauper held the whole house, and it is to be considered as one entire tenement; and in that case, a burglary committed in the part occupied by the lodger must have been laid to have been in the dwelling-house of the pauper. For these reasons, I am of opinion, that the pauper gained a settlement in the parish of *North Collingham*, and that the order of sessions must be affirmed. — *Bayley* J. I agree entirely with my Lord Chief Justice. The second point is a question of fact rather than of law. The sessions might have found it a separate holding; but I see nothing in the facts stated, from which a separation of the part occupied by the lodger from the rest of the house must be necessarily inferred. — *Holroyd* J. The word *tenement* in this statute must receive the same construction as it has in former acts, made in *pari materiâ*. The statute was only intended to alter the law in the particulars distinctly pointed out; and nothing is said to make it necessary that the whole of the tenement should be taken at one time. I am also of opinion, upon the facts stated, that the whole dwelling-house is to be considered as the dwelling-house of the pauper. *Best* J. It probably was the intention of the legislature, that a settlement should not be gained in such a case as the present. But we are bound to decide according to the words of the statute; and as to the first point, I entirely agree with the rest of the Court: as to the second, I have no doubt that in an indictment for burglary, the room occupied by the lodger might be described as the pauper's dwelling-house. Notwithstanding the underletting, in point of law he still continued the tenant of the whole house. Order of sessions confirmed.

R. v. Inh. of North Collingham.

Rex v. *The Parish of Ampthill in the County of Bedford, E.* 5 *Geo.* 4. 2 *B.* & *C.* 847. Order made on the 5th day of *August*, 1823, for the removal of *J. Apsley*, with his wife and children, from the parish of *St. Botolph*, in the town and county of *Cambridge*, to the parish of *Ampthill*, in the county of *Bedford*; the sessions confirmed the order, subject, &c. — Case: — The pauper, a ropemaker, being previously settled by estate in the parish of *Ampthill*, came with his family, at *Midsummer*, 1822, to reside in a house, in the parish of *St. Botolph*; he had hired it of one *Mitchell*, for 10*l.* a year; he put his own furniture into it, worth 15*l.* or 16*l.*; he continued to live in it above a year, and in *July*, 1823, being much distressed, he applied to the parish officer of *St. Botolph* for relief, who refused to give him any, but afterwards, in obedience to the order of a magistrate, gave the pauper 14*s.*,

A. hired a house for 10*l.* a year, and put into it his furniture, worth above 15*l.*, and lived in it above a year. Having applied for relief, the parish officers were compelled by a magistrate's order to grant it. After the relief was

R. v. Ampthill. granted, the landlord demanded his rent, but allowed *A.* a fortnight's time to pay it. Before that time expired, and before the rent was paid, the pauper was removed to another parish by an order of two justices. After he had been removed, he sold his furniture, and paid the year's rent: Held, first, that the parish officers having been compelled to grant relief, *A.* had thereby become actually chargeable, and was therefore removable by statute 35 G. 3. c. 101., although he had resided above forty days on the tenement. Held, secondly, that at the time when the order of removal was made, he had not gained any settlement in the removing parish, because he had not then paid a year's rent, as required by the 59 G. 3. c. 50.

on the 31st of *July*. The day after this relief was given, *Mitchell* called for his rent of 10*l.*, but gave the pauper a fortnight to pay it. On the 5th of *August* the pauper and his family were removed to *Ampthill*. He then applied to one *Furze*, an auctioneer, to buy his furniture, to enable him to pay his rent. *Furze* went to *Cambridge*, valued it at 13*l.* 3*s.* (exclusive of his tools, which were worth 5*l.*) and agreed to buy them for 10*l.*, which sum he paid to the pauper, who kept the key of the house all the time, and returned to it about the 14th of *August*, on which day *Mitchell* had sent a person to distrain for the rent, but no distress was taken, because the bailiffs, *Furze*, and the pauper went together to *Mitchell*, and the rent was paid by the pauper with the 10*l.* he received from *Furze*. Another auctioneer had been employed to sell some of the furniture, under the direction and according to the inventory of *Furze*, and sold it for 3*l.* 13*s.*, and after this sale the remainder of the furniture and the tools might be worth 6*l.*; without the tools the remaining furniture might be worth 1*l.* The sessions decided that the house was not of the annual value of 10*l.* — After argument, *Bayley* J. It is unnecessary to decide in this case whether, since the passing of the 59 *Geo.* 3. *c.* 50., a settlement is gained by residing on a tenement, for which an annual rent of 10*l.* is payable, but the annual value of which is less. But inasmuch as the earlier statutes required that the tenement should be of the annual value of 10*l.*, I am inclined to think that the 59 *Geo.* 3. *c.* 50. has not, by requiring that a rent of 10*l.* shall be paid, rendered the actual value immaterial. Without pronouncing any decision upon that point, I am of opinion, that at the time when this order was made, (and the date of the order is very material,) the pauper was removable, and that he had not then gained any settlement in the parish of *St. Botolph*. It is said, that although he had in fact received relief from that parish, yet as he possessed property, he was not actually chargeable. But I think, that as the parish did not act fraudulently, and as they were compelled to grant him relief by an order of justices, the pauper is to be deemed as actually chargeable, and if so, then he was removable, under 35 *Geo.* 3. *c.* 101., although he had resided on the tenement more than forty days. It is material to consider the history of the law with respect to this power of removal. By the 13 & 14 *Car.* 2. *c.* 12. §1., upon complaint made to any justice of the peace, within forty days after any person comes to settle in any tenement under the yearly value of 10*l.*, any two justices of the division where any person that is likely to be chargeable to the parish shall come to inhabit, are authorised to remove such person to such parish, where he was last legally settled. Under that statute, complaint must be made to a justice within forty days after the party has come to reside in the parish. The 35 *Geo.* 3. *c.* 101. recites this act, and repeals so much of it as enables justices to remove persons likely to be chargeable, and enacts, that "no person shall be removed from the parish where he shall be inhabiting, to the place of his last legal settlement, until such person shall have become *actually* chargeable to the parish in which he shall then inhabit;" and then two justices are empowered to remove such person in the same manner and subject to the same appeal, and with the same powers as might have been done before the passing of that act, with respect to persons

likely to become chargeable. Now taking these two statutes together, I think the meaning of them is, that the statute 35 *Geo.* 3. *c.* 101. takes away altogether the power of removing, within forty days, persons likely to become chargeable, but gives the power to remove persons actually chargeable, at any time after they have become so, and before they have actually gained a settlement in the removing parish. I am of opinion, also, that on the 5th *August*, 1823, when the order of removal was made, the pauper had not acquired any settlement in the parish of *St. Botolph.* The statute 59 *Geo.* 3. *c.* 50. introduces new provisions with respect to the gaining of a settlement by renting a tenement. Before that statute any person renting a tenement of the annual value of 10*l.*, and residing on it forty days, obtained a settlement; but that statute enacts, that no person shall acquire a settlement by reason of dwelling for forty days, in any tenement rented by such person, unless such tenement shall be *bonâ fide* hired by such person, at and for the sum of 10*l.* a year at the least, for the term of one whole year, nor unless it shall be held, and the rent for the same actually paid, for the term of one whole year at the least, by the person hiring the same." Now in this case the pauper took the tenement at *Midsummer*, 1822, for one year; the year expired, and the rent became due and payable at the expiration of that time; and if the pauper had made a legal tender of the rent upon the premises before sun-set or the last hour of the day when it became due, and had been able to shew that he was always afterwards ready to pay it, possibly such a tender might have been considered in point of law as equivalent to payment. But in this case he had neither paid the rent nor done any thing which, in point of law, can be considered as payment, at the time when the order of removal was made. He had not done what was requisite, in order to give him a settlement, by the renting of a tenement, according to the provisions of the 59 *Geo.* 3. *c.* 50. The order of removal, then, was a valid order at the time when it was made, and the subsequent payment of the rent cannot affect it. I am, therefore, of opinion, that in this case, the pauper, by having applied for relief from the parish in *July*, 1823, and having received that relief under an order of magistrates, was then actually chargeable, and therefore removable, under the 35 *Geo.* 3. *c.* 101. And I am also of opinion, that at the time when the order of removal was made, he had not acquired any settlement in the parish of *St. Botolph*, because he had then neither paid a year's rent, nor done any act which, in point of law, can be considered as equivalent to payment. *Holroyd* J. I also think, that this order of removal is valid. A party, in order to gain a settlement, by renting a tenement, is required, by the 59 *Geo.* 3. *c.* 50., to do certain things which were not requisite before. One of the things required is, that there should be a payment of one year's rent by the tenant to the landlord. Here the year's rent had become due and payable at *Midsummer*, and on the first of *August* the landlord gives the pauper a fortnight's time to pay it, and before it is actually paid, and before the pauper had done any act which the law considers equivalent to payment, the order of removal was made. At that time, then, the pauper had not gained any settlement in the parish of *St. Botolph*. It is therefore unnecessary to consider, whether the finding of the

R. v. Ampthill. justices that the annual value of the tenement was less than 10*l*.; is material or not. I am of opinion, that the subsequent payment of rent does not, by retrospective operation, give the party a settlement in the parish of *St. Botolph*, at the time when the order of removal was made. I fully agree with my Brother *Bayley*, that since the 35 *Geo.* 3. *c.* 101., it is not necessary to remove paupers actually chargeable, within forty days after they have come to settle, but that they may be removed at any time after they have become so chargeable. *Littledale* J. It is unnecessary in this case to decide the question, whether, in opposition to the contract of the parties, any other value than the rent actually payable can be set up, because since the statute 59 *Geo.* 3. *c.* 50., no settlement can be gained until a year's rent is actually paid. Now in this case the order of removal was made on the 5th of *August*, and the year's rent was not paid until the 14th. The subsequent payment of the rent cannot, by retrospective operation, give him a settlement at the time when the order of removal was made, and therefore the pauper had not gained any settlement at that time, and having then become actually chargeable, he was properly removed. The order of sessions must, therefore, be confirmed. Order of sessions confirmed.

2. Of the Value of the Tenement, under stats. 13 & 14 C. 2. c. 12. and 9 & 10 W. c. 11. and how such Value is to be ascertained.

Where the same tenement is taken by two tenants jointly, how it affects the value, and see *post*, (4), of this §.

Of the yearly value of 10l.

If the tenement be under 10*l*. a-year, the justices upon complaint within forty days, have power to remove the person coming there to reside; if it be above 10*l*. a-year, they have no power to remove him; and continuing upon the same irremoveable for forty days, he thereby gains a settlement. Upon which it is observable, that the payment of the rent can be no matter of consideration with regard to the settlement; for the settlement is obtained before the rent becomes due: for the settlement is not suspended, as in the case of a hired servant, until he hath ended his year; but so soon as he hath resided forty days, he is settled without more; even as a servant hired for a year became settled in forty days, before the statute of the 8 & 9 *W.* 3., and as apprentices are still settled in forty days, without any regard to serving out their time. And with respect to what shall be deemed a tenement for 10*l*. a-year, sufficient to gain a settlement, it hath been adjudged as follows.

The rent is not material, if the tenement be of the value of 10l. a year.

South Sydenham v. *Lamerton*, *T.* 3 *Geo.* 1. 1 *Sess. Ca.* 115. 1 *Str.* 57. 2 *Bott*, 129. 2 *Nol. P. L.* 4. 27. 31. 39. Case specially stated: A person took a lease of a tenement for ninety-nine years, determinable on three lives, and paid his fine, and the rent reserved was but 7*l*. but the real value was 13*l*. — By the Court. The quantity of the rent is not material, but the value of the tenement. If there be a lease of land worth 10*l*. a-year, and a fine be paid, or no rent reserved, yet if the tenement be worth 10*l*. a-year, it makes a settlement; for the settlement depends on the value of the tenement, and not on the rent.

[*Sed vide* stat. 59 *Geo.* 3. *c.* 50. *ante*, p. 567.]

Rex v. *Southwold, H.* 13 *Geo.* 2. 2 *Sess. Ca.* 198. 2 *Stra.* 1127. *Burr. S. C.* 140. 2 *Bott,* 131. 2 *Nol. P. L.* 28. 3*d ed.* A person took a house at the yearly rent of 10*l.* The landlord agreed to make new buildings, which improvements were never made. The house without the improvements, was worth only 6*l.* 10*s.* a-year. — By the Court. The sessions must judge upon the facts; they have stated that the agreement was for 10*l.* a-year; this is evidence of the value, but the justices have a right to enquire into the real value, and they have expressly stated as a fact, that this house was only of the value of 6*l.* 10*s.* a-year; and the mere covenant to build, which covenant was never performed, cannot alter the case. Therefore it was adjudged that this was no settlement.

Value of stock on a tenement not to be computed as rent.

If a rent of 10l. be given in contemplation of improvements by the landlord, who never makes them, and the house is thereby not worth so much rent, a settlement will not be gained by taking or paying that rent.

Rex v. *Weston, T.* 14 & 15 *Geo.* 2. 2 *Sess. Ca.* 141. 2 *Stra.* 1156. *Burr. S. C.* 166. 1 *Bott,* 132. 2 *Nol. P. L.* 47. 3*d ed.* Case specially stated: The pauper being settled at *Weston* took a farm at *Kirton* of 10*l.* a-year, which had been let at that rent for five or six years then last past, but before that time was let at 7*l.* a-year only. When he first took and entered thereon, he was not of ability to stock the same. Before his entry, he was told by the former tenant, that his farm was too dear. To which he answered, that he did not regard the dearness; for as it was 10*l.* a-year, it would gain him a settlement, and put an end to a dispute there was between two towns about his settlement; but desired the said former tenant to take no notice thereof to any body. — By the Court. We are not to determine the matter upon the evidence given to the sessions, but upon facts stated and adjudications made by them. Here they have stated circumstances; but they have not explicitly stated the real value, nor have they adjudged any fraud. The act requires the renting a tenement of the yearly value of 10*l.* They state, that he did take a tenement of 10*l.* a-year at *Kirton.* Indeed they add, that it had been let at 7*l.* a-year formerly. But it might be then worth more, or might have been afterwards improved; and it had for five or six years last been let at 10*l.* a-year. And the quantity or value of his stock doth not alter the value of the tenement. They also state a conversation between him and the former tenant, who told him it was too dear; to which he answered, that he did it to gain a settlement. Yet they do not adjudge that there was any fraud; nor do they state that it was under the value of 10*l.* a-year, and the evidence rather proves it to be of that value. They must expressly state that it is fraudulent, or else we cannot take it to be so. And we must take the case stated to be the whole case. Therefore it was adjudged, that thereby he gained a settlement at *Kirton.*

The quantity of stock on a tenement does not alter the value.

Rex v. *Purley, T.* 52 *Geo.* 3. 16 *East,* 126. *Bott, Cont.* 129. 2 *Nol. P. L.* 33. *Richard Emmons, &c.* were removed from *Woodley* and *Sandford* to *Purley,* both in *Berks:* — The sessions confirmed the order. — The pauper, *R. E.,* having been legally settled in *Purley* from *Michaelmas,* 1808, to *Michaelmas,* 1809, occupied a cottage and garden in the liberty of *Woodley* and *Sandford,* in the parish of *Sonning* in *Berks,* as tenant from year to year, and which were of the annual value of 4*l.* He also held a piece of land in the parish of *Tilehurst* for one year, from *Michaelmas,* 1808, to *Michaelmas,* 1809, at the rent of 6*l.* 10*s.* It

But if land be taken ready sown for crop, its rent may be computed higher on that account.

Renting land for setting potatoes, which had been dug, &c. by the landlord.

R. v. Purley.

had been cropped by the landlord with clover and grass-seeds previously to letting thereof to the pauper, and in consequence of its being so cropped, it was worth 6*l.* 10*s.* that year, but had it not been so cropped by the landlord, it would have been worth only 2*l.* 5*s.* *per* year. The pauper during the whole of the year resided on his said cottage and garden in *Woodley* and *Sandford.* — Ld. *Ellenborough* C. J. He occupied a tenement, which during that year was in fact of the value of 10*l.*; how it became of that value is immaterial: it might have happened that the crop was worth more in that year. Both orders quashed.

Renting land improved in value from the landlord's having previously dug it for a particular purpose, and on that account let it at a much higher rent, will confer a settlement.

Rex v. *Ringwood*, *E.* 53 *Geo.* 3. 1 *M.* & *S.* 381. *Bott*, *Cont.* 130. 2 *Nol. P. L.* 33. Removal from *Tollard Royal* to *Ringwood.* Order confirmed, subject, &c. The pauper being settled in *Ringwood* (*a*) rented a cottage in *Tollard Royal*, for which he paid two guineas a year, and he had the use of a yard for which he paid one pound a year. Whilst he occupied this cottage and yard, he took nearly an acre of land in another parish, *at the rent of eight pounds from Easter to October following, for planting potatoes. The ground had been dug by the landlord for that purpose, and it would not have been let for more than half price if it had not been dug.* [Ld. *Ellenborough* C. J. left the Court during the argument.] — *Grose* J. The only question is, whether the pauper came to settle on a tenement of the yearly value of ten pounds. Looking at the case, we find that he went to *Tollard Royal* with his family, and resided there, more than forty days. As to the value of the tenement which he occupied during that time, it is expressly stated to be above ten pounds; but it has been contended that the land which he rented from *Easter* to *October* for planting potatoes might be worth eight pounds for that time, and yet not of that value for a year. That proposition I do not understand, and therefore cannot assent to it. — *Le Blanc* J. In this case the pauper rented a cottage in *Tollard Royal* at two guineas a year, during which time he also rented nearly an acre of land in another parish from *Easter* until *October* for planting potatoes, at the rent of eight pounds, which land had been previously dug by the landlord, and would not have been let for more than half that price, if it had not been so dug. All these premises taken together at the rent for which they were let, amount to above the value of ten pounds. But the question is, whether we are to reduce that value by taking the land, which was let for eight pounds, at the rent for which it would have been worth to be let, if it had been in a different state; or in other words, whether we are to deduct from the rent the value of the labour bestowed by the landlord on the premises before he let them. I think the Court must look to what was the value of the

(*a*) The manner in which the settlement was gained in *Ringwood*, viz. by renting a tenement in *Ringwood* of 10*l.* *per annum*, formed part of this case, and it was meant to be contended (the pauper having slept forty nights in the parish of *Ringwood*, and forty nights in another parish, during the tenancy, and having *slept* the last night but one of the tenancy in such other parish, and *passed the last night of the tenancy in his house at Ringwood, packing up his things without going to bed,*) that no settlement was gained in *Ringwood;* but *per* Ld. *Ellenborough* C. J. The Court will not enter into minute enquiries whether the pauper *slept* in the literal sense of the word; what will satisfy "*pernoctavit*" is sufficient.

tenement at the time the pauper came to settle upon it, without considering by what means it became of that value. I agree with the gentlemen who have argued on the other side, that the value of the tenement increased by the labour bestowed upon it after the letting cannot be taken into the account; as if the pauper had taken it at the rent of five pounds, and had bestowed labour upon it to the amount of five pounds more, that would not have made a renting of ten pounds. But where the labour has been previously bestowed so as to make the land fairly worth the rent at the time it is taken, the Court cannot separate the value of that labour from that of the land. — *Bayley* J. This is nothing more than a party taking land in a high state of cultivation, which has rendered it of the value agreed to be given for it at the time of the taking. Nor do I think that it would have been worth less if it had been taken for a whole year. It is urged, indeed, by the counsel, that if the pauper had taken it for a year, he would have had to dig it himself, and then it would have been of less value to him than what was given for it for a shorter period; but it does not follow, that if he had taken it for a year, he would necessarily have had to dig it. I think, therefore, that this tenement, coupled with the other property amounts to a tenement of more than ten pounds a year. — Order of sessions quashed.

Land ready manured, &c. for planting potatoes.

R. v. Ringwood.

Rex v. *West Cramore, M.* 54 *Geo.* 3. 2 *M. & S.* 132. *Bott, Cont.* 124. 2 *Nol. P. L.* 33. Removal from the parish of *Monckton Deverell* to the parish of *West Cramore;* the Court of quarter sessions confirmed the order, subject, &c. — Case: A settlement in the parish of *West Cramore* was proved by the respondents, subsequently to which the pauper rented a house at *Monckton Deverell,* of the value of 3*l.* *per ann.* and occupied and resided in it for four years. During one year of his tenancy, he rented of one *Rossiter* 136 lugs of land, at *Monckton Deverell,* at the rate of 9*d.* *per* lug, amounting to the sum of 5*l.* 2*s.*, for the purpose of planting potatoes. He also, at the same time, rented of one *Maish* 58 lugs, at *Hill Deverell,* an adjoining parish, at the same rate of 9*d.* *per* lug, amounting to 2*l.* 4*s.* 9*d.* These rentings together amounted to 10*l.* 6*s.* 9*d.* The pauper agreed to take the land of *Rossiter* ready ploughed and manured; and *when he took it the ploughing and manuring was begun, but not finished;* but when he entered upon it, it was quite prepared. At the time of planting, he followed *Rossiter* to plough, and planted the potatoes himself, which were afterwards covered in by the plough. The agreement with *Maish* was similar to that with *Rossiter*, and when the pauper took and entered *Maish*'s land, it was ready ploughed and manured. The potatoes were planted in the same manner as before stated. The two pieces of land together, without being ploughed and manured, were worth about 2*l.* 8*s.* *per annum,* but being ploughed and manured were worth what the pauper paid for them. The pauper took the two pieces of land in the spring for hoe crop, and he planted the potatoes in *May,* and took the crop out in *November.* *Gaselee* and *Moore,* in support of the order of sessions, stated, that this case had been reserved before *Rex* v. *Ringwood,* 1 *M. & S.* 381. (*ante,* p. 574.) was decided; but they attempted to distinguish it from that case, because there the land had been dug by the landlord before the letting; whereas

Renting land for planting potatoes, where the pauper agreed to take the land of the landlord ready ploughed and manured, and when he entered upon it, it was quite prepared, was held to be a renting of land of a yearly value, as it was increased by being ploughed and manured by the landlord, although when the pauper *took it* the ploughing and manuring was begun, *but not finished.*

Land ready manured, &c. for planting potatoes.

R. v. West Cramore.

here it is found that the ploughing and manuring was not completed when the pauper took the land of *Rossiter*. And they cited the words of *Le Blanc* J. in *Rex* v. *Ringwood*, "that the value of the tenement increased by the labour bestowed upon it after the letting cannot be taken into the account." And they said that this was nothing more than an agreement to take the land, and employ the landlord to improve its value. If instead of the landlord, the pauper had employed labourers for that purpose, surely it would not have conferred a settlement. — Ld. *Ellenborough* C. J. The pauper agreed to take a tenement, which should be of a certain value; and at the time when he entered on it, it was of that value; for the ploughing and manuring were then finished. — *Le Blanc* J. The distinction endeavoured to be made does not vary the case; and it does not appear that any precise sum was agreed to be paid for the labour. The observation alluded to from *Rex* v. *Ringwood* must be taken with reference to the case then before the Court, and to the context where it is found, rather than as a general observation or applicable to a case of this kind. Order of sessions quashed.

Evidence may be given of a value more than commensurate with the rent paid.

Rex v. *Bilsdale Kirkham, in the North Riding of the County of York, T.* 16 *Geo.* 3. 2 *Bott*, 137. 2 *Nol. P. L.* 33. *Thomas Wilson* went from the parish of *Bilsdale Kirkham* to *Bilsdale Westside*, and there married *Sarah* the pauper, who then rented a tenement of 4*l.* a year, and he occupied the said tenement with her during his life. He afterwards died, leaving the said *Sarah* the pauper. Evidence was offered to prove this tenement at the time the man occupied it with his wife was worth 15*l.* a year, though let at no more than 4*l.* — But the sessions rejected this evidence, and determined on the rent actually reserved; which being under 10*l.* a year, they adjudged that the pauper was not settled in the parish of *Bilsdale Westside* by renting such tenement. — By Ld. *Mansfield* C. J. The justices have done wrong, in not receiving the evidence of the value of the tenement beyond the rent paid. Every lease from year to year begins afresh every year, and is in point of law a new demise. If the tenement was of the value of 10*l.* a year any year during the man's occupation of it, he will thereby gain a settlement. The case was sent back to the sessions to receive evidence of the value. Which being certified as above, the Court held it a good settlement.

The special case must describe the nature of the tenement.

Rex v. *North Bedburn, E.* 24 *Geo.* 3. *Cald.* 452. 2 *Bott*, 96. 2 *Nol. P. L.* 37. Removal from *Quarrington* to *North Bedburn*, and confirmed by the sessions. The material part of the case stated, was an agreement between the pauper and certain other persons, by which they agreed to let to the pauper at a certain rent a landsale colliery, (in *North Bedburn*,) which imported, (as was stated by the counsel,) the taking of a right to get coals from a certain pit, and also the using of a quantity of machinery (personal chattels) belonging to the colliery. — But *per Willes* J. We cannot take notice of the meaning attributed to the term, landsale colliery, and said to be so understood in the North by the trade, unless it were so stated to us. Orders confirmed.

A furnished room with fire and candle, rented by the week in the

Rex v. *Whitechapel, H.* 26 *Geo.* 3. 2 *Bott*, 96. 2 *Nol. P. L.* 37. 41. 49. Removal from *St. Mary, Whitechapel*, to *Westham*, and quashed by the sessions. The pauper's husband (*Peter Allam*) hired a house in *W.* at 8*l.* 8*s. per annum*, and lived in it

till his death; he also hired a room at a victualling house in *W.* at 3*s.* a week, to be made use of, and which was used as an office or place for the justices to meet and transact the parish and other public business. The room was furnished with chairs and tables, and the landlord was to find firing. And the landlord was to have the use of the room when *Allam* did not want it. *Allam* had the key, and might have locked it if he would, but did not. *Allam* alone had the concern of and paid for the room. — *Buller* J. There is nothing found as to the value of the fire and furniture, and all we can say is, that he has rented a tenement of 10*l.* a year. Order quashed.

Furnished room. Post-windmill, &c.

gross, is a tenement, and the sessions should find the value of the furniture distinct from that of the tenement.

Rex v. *Londonthorpe*, *T.* 35 *Geo.* 3. 6 *T. R.* 377. 2 *Bott*, 140. 2 *Nol. P. L.* 35. *John Ingram* took a tenement of 6*l.* a year, and rented a piece of waste ground at the yearly rent of 10*s.* 6*d.*, on which he had the privilege of building a post windmill. This he did at the expence of 120*l.* The mill was constructed on cross traces, laid upon brick pillars, but not attached or affixed thereto, which is the usual mode of building mills of that nature. The mill was considered as the property of the tenant. He let it to one *J.* at the annual rent of 9*l.*, and during that time resided in the said tenement at the rent of 6*l.* The pauper sold the mill afterwards as a chattel interest. — *Per* Lord *Kenyon* C. J. There is no doubt but that the taking of a windmill attached to the ground of the value of 10*l.* a year, will confer a settlement; a *præcipe* will lie for such a windmill. The taking of a rabbit warren was also held to give a settlement, because it was a tenement; and so in the case of the landsale colliery. But this windmill, as described in the case, is nothing but a chattel. And if in questions of this kind we were merely to consider the ability of the pauper, without at the same time considering whether he rented a tenement, we should abandon the statute altogether, and the decisions upon it. It might as well be said, that an iron malt mill would give a settlement. This post windmill was the sole property of the tenant himself, and it was not fixed in the ground, but detached from it. But in order to confer a settlement it should be so connected with the land as, in legal contemplation, to fall within the description of a tenement.

If a chattel (as a post windmill) be placed upon land by the tenant, its value cannot be added to the rent of the land.

Rex v. *Hellingly*, *T.* 48 *Geo.* 3. 10 *East*, 41. *Bott*, *Cont.* 127. Removal from *Hellingly* to *Brighthelmstone*; and quashed by the sessions.—Case: The pauper's husband hired a house at *Brighton* by the week, paying four shillings a week for the same, which house he so continued to occupy and sleep in. The house so hired and occupied by him is at all times of the year of the value of 4*s.* a week if taken by the week; but is not of the value of 10*l.* *per annum* if taken by the year. — By Ld. *Ellenborough* C. J. The words of the statute enable the justices to remove any person who "shall come to settle in any tenement under the *yearly value* of 10*l.*;" that is, upon a tenement, the value of which is to be estimated by its annual value, *to be let by the year*, at the time of the parties' coming to settle upon it. It need not, in fact, be let for a whole year; it may be let only by the week or the day. But those lettings are only *media* for ascertaining the yearly value if nothing appear to the contrary. But when it is expressly found that the tenement was not of the value of 10*l.* a-year to be taken by the year, it is impossible for any reasoning to make the matter

It is not sufficient if the tenement only produce more than 10l. per annum when let by the week.

How the annual value shall be computed.

more clear. The statute, speaking of *yearly* value, means the value of the tenement to be let by the year.

A contract of renting at 10l. per annum, the landlord paying parish taxes, is a good taking of a tenement of the proper value within the statute.

Rex v. *Framlingham, T.* 13 *Geo.* 3. *Burr. S. C.* 748. 2 *Bott,* 135. 2 *Nol. P. L.* 32. *S. Churchyard* contracted with *S. Hayle* to hire of him a *public-house,* &c. at the rent of 10*l. per annum, Hayle* to pay all parish rates and charges. And by Ld. *Mansfield* C. J. and the Court, This was a good taking a lease of a tenement of the yearly value of 10*l.* within the intention and meaning of the act of parliament. *It turns upon the credit given the person;* now here credit is given to this man for 10*l.* a-year. He contracted for it at that rent, and he paid that rent to his landlord for it. It was a real and *bonâ fide* taking a tenement of that yearly value.

Rex v. *St. Paul's, Deptford, H.* 51 *Geo.* 3. 13 *East,* 320. *Bott, Cont.* 128. 2 *Nol. P. L.* 29. *Richard Rice* was removed from *St. Paul's, Deptford* in the county of *Kent,* to *Greenwich.* The sessions quashed the order, subject, &c. — Case: *Richard Rice,* the pauper, at *Christmas* 1807, rented a tenement of *E. Burford,* in *Greenwich,* and resided upon it more than forty days, under an agreement by which it was stipulated that he should pay 10*l.* by the year to *Burford* for the said tenement, that *Burford* should pay all taxes, rates, and charges whatsoever, which he did. The sessions were of opinion that if the taxes, rates, and charges, usually deemed tenant's taxes, are to be deducted from the 10*l.*, which the tenant agreed to pay to the landlord, the said tenement was not of the annual value of 10*l.*, but if those taxes are not to be deducted the said tenement was of the value of 10*l.* In support of the order, *Rex* v. *Framlingham,* (*supra,*) was admitted to be directly in point; but it was said that it was decided in the absence of Ld. *Mansfield,* and at a time when the Court leant much in favour of settlements, but of late they have in all cases of doubt resorted to the words of the act of parliament; and here it is clear, that if the landlord be to pay all the tenant's rates and taxes out of the 10*l.* annual rent reserved, *the yearly value* of the tenement cannot be so much as 10*l.* which is necessary to confer a settlement by the words of the statute (13 & 14 *Car.* 2. *c.* 12.) — Lord *Ellenborough* C. J. It having been settled nearly forty years ago that the rent reserved (all fraud apart) is to be taken as the criterion of the value of the tenement without reference to the payment of the rates and taxes by the landlord, we are not now at liberty to disturb that decision upon any speculative opinion. The tenant may be said to obtain credit for a tenement, in one sense, of the yearly value of 10*l.*, and I cannot say that the former decision is so directly against the words of the act as necessarily to be wrong. — *Grose* J. It is better *stare decisis.* The very case has already been determined. — *Le Blanc* J. If we were to decide against the former case it would let in the deduction from the amount of the rent reserved of every payment to be made by the landlord, which might have been thrown upon the tenant. — The rule being settled otherwise, it is better to abide by it. — Order of sessions quashed.

An agreement in writing unstamped for the letting a tenement at a certain rent, hav-

Rex v. *Castle Morton, E.* 1 *Geo.* 4. 3 *B. & A.* 588. Removal from *Tewkesbury* in *Gloucestershire,* to *Castle Morton* in *Worcestershire.* On appeal, the sessions confirmed the order, and stated the following Case for the opinion of the Court of K. B.: *James Bedward,* the husband of the pauper, being settled by hiring

and service in *Castle Morton*, afterwards took a tenement in the parish of *Longdon* in the county of *Worcester*, of one Miss *Poole*: the terms of the taking were contained in a written agreement, unstamped, which was lost. *James Bedward* after residing on the tenement about half-a-year, gave Miss *Poole* 3*l*. to be off the bargain, and entered into a fresh agreement with Mr. *Pencent*, the landlord of Miss *Poole*, who accepted him as tenant in her stead. The appellants, to prove the value to have been 10*l*. or upwards, offered parol evidence of the contents of the unstamped agreement which had been lost, in order to prove the amount of the rent agreed for between *Bedward* and Miss *Poole*, which parol evidence the Court refused to admit. In support of the order of sessions, *Rippiner* v. *Wright*, 2 *B*. & *A*. 478., was cited as an authority in point. *Contra*, *Dover* v. *Maester*, 5 *Esp*. 92., in which a promissory note was admitted in evidence for a collateral purpose, although not stamped. — *Abbott* C. J. The promissory note was there admitted in evidence, on the ground that the defendant, who had been in that case guilty of a crime, should not be allowed to relieve himself from the consequences of it by such an objection. And so in the case of forgery, a prisoner cannot object that the forged instrument, when produced, cannot be given in evidence for want of a proper stamp. But this case is very different; for the parties here seek to shew the value of a tenement, by the proof of a contract previously entered into respecting it. The contract was not, therefore, in this case, collateral, but of the very essence of the case. Nor can it be introduced as a declaration; for it is a declaration made under such circumstances as prevent its being admitted in evidence. Order of sessions affirmed.

R. v. Castle Morton.

ing been lost: Held, that parol evidence of its contents was not admissible, for the sake of proving thereby the value of the tenement.

It is a subject of congratulation to the magistracy, that the substitution of a *bonâ fide* rent actually paid in lieu of annual value, in this branch of the law of settlement, by reducing the question to a simple matter of fact, will in future relieve them (at least by degrees) from the irksome duty of attending to the conflicting testimony of advocating surveyors and interested witnesses.

By stat. 59 *Geo*. 3. *c*. 50. (*ante*, p. 539, 540.) it is enacted, that from and after *July* 2d, 1819, no settlement shall be gained unless the tenement shall have been *bonâ fide* " hired at and for the sum of 10*l*. a-year, and unless the rent for the same be actually paid for one whole year at the least." **59 G. 3. c. 50.**

(3.) Of divided Tenements.

As to *whether it shall be one entire tenement?* It hath been adjudged as follows:

Need not be one entire tenement.

North Nibley v. *Wotton-under-Edge*, *M*. 1 *Geo*. 1. *Sett*. & *Rem*. 86. 1 *Sess*. *Ca*. 73. *Fol*. 79. 2 *Bott*, 115. 2 *Nol*. *P*.*L*. 28. A person rented an alehouse from *Lady-day* to *Lady-day*, for 6*l*. a-year; and in *May* following rented a piece of land of the yearly value of 8*l*. to the following *Lady-day*, at 5*l*. 10*s*., after holding the same about two months, he ran away. It was held, that it was not necessary the tenement should be rented of one person; though it be rented of several, yet in him it is but

Tenements lying in different parishes.

one, and the statute is satisfied, he being of ability to be trusted with a tenement of 10*l.* a-year.

So also in *Rex* v. *St. Margaret, Fish-street-Hill, H.* 11 *Geo.* 3. *Burr. S.C.* 677. 2 *Bott*, 120. 2 *Nol. P.L.* 11. It was held, that the renting of one person a stable at 2*l.* 10*s.* a quarter, and of another a tenement of 6*l.* a-year, would gain a settlement.

Furthermore: It is to be considered. How far *the same tenement, but lying in different parishes*, shall gain a settlement: As to which it hath been adjudged as follows:

A tenement, lying part in one parish, and part in another parish, will gain a settlement.

South Sydenham v. *Lamerton*, *T.* 3 *Geo.* 1. 1 *Stra.* 57. 1 *Sess. Ca.* 115. *Fol.* 81. 2 *Bott*, 115. 2 *Nol. P.L.* 27, 31. A person rented a tenement of 10*l.* a-year, being one entire tenement, but lying in two parishes. The question was, Whether this gained a settlement? — By the Court: If the tenement be entire, though the lands be in different parishes, it seems to be a settlement in that parish where the house is; otherwise, where the tenements are distinct, and lie in different parishes, as if a tenement of 8*l.* lie in one parish, and a tenement of 3*l.* in another.

But the question in this case only was, Whether one and the same tenement, and not whether two distinct tenements, of the yearly value of 10*l.* but lying in different parishes, shall gain a settlement? So that the determination in this case, as to this latter point, was extra-judicial. And the reason given by the Court in this case doth extend as well to different tenements, as to one entire tenement, *viz.*, The mischief recited by the statute, and intended to be prevented, is the vagrancy of poor persons, who used to come into parishes where there was the best stock; and the statute describes who are intended by those poor, namely, such persons who are not capable of hiring a tenement of 10*l.* a-year. Now the man's sufficiency is not the less, because 6*l.* a-year, part of the tenement, is in a different parish. There are considerable farmers who do not rent 10*l.* a-year in any one parish; and it would be hard to adjudge that therefore they gain no settlement.

Elsted v. *Hollibourne*, *M.* 3 *Geo.* 2. 2 *Sess. Ca.* 130. 2 *Stra.* 849. 2 *Bott*, 116. 2 *Nol. P. L.* 27. The case was this: A person rented a tenement, consisting of a farm-house and lands of 12*l.* 10*s.* a-year; which house and land lay contiguous, and had been usually letten together, and occupied by the same person; but the house and so much of the land as together amounted to 9*l.* a-year, lay in one parish, and 3*l.* 10*s.* in another parish. By the Court: This was held to be a settlement, on the authority of *South Sydenham* v. *Lamerton*, *supra*.

Different tenements and lying in different parishes, will give a settlement.

Further yet; it remains to be considered, how far *two distinct tenements, one being in one parish, and another being in another parish*, shall be deemed a sufficient tenement within the act, whereby to gain a settlement: For although in the case of *South Sydenham* v. *Lamerton* aforesaid, the Court seemed to be of opinion that two such tenements would not gain a settlement; yet that (as hath been observed) was not the point in question. And in the case of

Rex v. *Sandwich*, *T.* 8 *Geo.* 2. *Burr. S. C.* 44. 2 *Bott*, 117. 2 *Nol. P. L.* 28. it was resolved as follows: A person rented a house in *Studland* at 30*s.* a-year. After he had lived in it about two years, he took lands in *Langton* of 12*l.* a-year, on which there

was no house; and occupied the said lands two years: all which time he inhabited in and rented also the said house in *Studland*. By the Court: It hath been a question, whether two distinct tenements taken at different times (where neither of them alone amounted to 10*l*. a-year in value) should make a settlement? But it is now settled that it does. And it is the same thing whether the taking were distinct or entire, or in one parish or two parishes. The settlement is in the parish where he lives, (See *Rex* v. *Fritwell*, *post*, p.600.) The ground of these resolutions is the ability to rent a tenement of such a value; which excludes the presumption of his being like to become chargeable to the parish.

Tenements lying in different parishes.

R. v. Sandwich.

St. Lawrence v. *St. Maurice*, both in *Winchester*, *E.* 8 *Geo.* 3. *Burr. S. C.* 588. 2 *Bott*, 119. *Richard Gradidge*, husband of the pauper, rented a tenement of one *Henry Warne*, in the parish of *Hursley*, for a year from *Lady-day*, at 3*l*. 10*s*. a-year, but resided therein five or six weeks only, and then quitted it, and tendered the key to the said *Henry Warne*, which *Warne* refused to accept, whereupon *Gradidge* left it with a neighbour, before *Midsummer-day* then next, for the said *Warne* to take it when he thought proper. On the said *Midsummer-day*, *Gradidge* took a tenement in the parish of *St. Maurice*, at the rent of 9*l*. a-year; and on the same day entered into possession thereof, and resided thereon above forty days, before the key in *Hursley* was received by the said *Warne*, who did not accept it till the 16th of *August* following. It was objected, that although it be settled, that if a person rents a tenement in two different parishes, amounting to 10*l*. a-year in the whole, he shall gain a settlement in that of the two parishes in which he resides; yet still, in order to gain a settlement, he ought to be the joint occupier of both tenements within the same period: Whereas here, the first contract was dissolved from *Midsummer* at least, if not sooner. The landlord took back the key on the 16th of *August*, which relates back to the abandonment some time before *Midsummer*. — But by the Court: Here is a contract for a year in *Hursley* not dissolved; nor could it be dissolved: The landlord refused to accept the key: And he did not receive it at last till the middle of *August*, which was more than forty days after hiring the second tenement.

Rex v. *Fillongley*, *M.* 27 *Geo.* 3. 1 *T. R.* 458. 2 *Bott*, 123. 2 *Nol. P. L.* 5, 39. Two justices removed *Mary Watson*, widow, and her five children, from *Bedworth* to *Fillongley*. The sessions confirmed the order, and stated the following Case: That *John Watson*, late husband of the pauper, rented a farm of 40*l*. a-year at *Fillongley*, and being distrained on for rent, his brother purchased for him out of the distress two cows and three sheep, with which he came to *Bedworth* about *Lady-day*, 1783, where he took a house and land of 8*l*. a-year rent, and resided thereon about three years; during which time the rent was paid thus, (*viz*.) the first half year by himself, the second half year by the parish of *Fillongley*, the third half year by himself, and the fourth by distress: That about the said *Lady-day*, 1783, *Thomas Watson*, in a conversation with his brother *John Watson*, concerning his family and poverty, said, "I am sorry for your family, and therefore I will give you a close in *Astley*, (an adjoining parish)

Living upon a tenement of the value of 10*l*. a-year, although a part thereof is given out of charity, and is in another parish, gains a settlement.

Where a part of the tenement is held rent-free, by the charity of the landlord.

R. v. Fillongley.

containing "about four acres, to enjoy as long as I please, and to take it again when I please, and you shall pay nothing for it: *John* enjoyed the said close, which was worth 2*l.* 10*s.* a-year, for three years, during which time his brother *Thomas* paid both the land-tax and poor-rates for the same; and all the tillage was done by the servants and horses of *Thomas,* and they also got in the harvest: That one year the said close was sown with *John's* wheat, procured by the gleanings of his family; and in the last year the same was sown with *Thomas's* corn, at whose expence the crops of the said corn were carried to *John's* house: That the cattle of *Thomas* were never put into the said close, except for tilling the land; but that the cattle of *John* were upon the said close during the time he so enjoyed it.—*Ashhurst* J. In all cases upon settlement law, it is the safest way to adhere to the *words* of the act; now taking it upon the words, nothing can be more clear; they are "that it shall and may be lawful, upon complaint made by the churchwardens, &c. within forty days after any person or *persons coming to settle as aforesaid in any tenement under the yearly value of* 10*l.* *for* any two justices, &c. of the division where any person or persons that are likely to be chargeable to the parish shall come to inhabit, by warrant to remove, &c." The act does not say any thing about *ability;* that is not the *criterion.* And if the party come to reside upon a tenement of 10*l.* a-year, he cannot be removed, and then he gains a settlement by forty days' residence. But if ability, or rather confidence, were to be taken into consideration, according to the case reported in *Strange;* yet if a man *have sufficient credit* and confidence *reposed in him* by another, as to be trusted with a tenement of 10*l.* a-year value, *even out of charity,* it is sufficient to answer the intent of the statute, because such an one is not likely to become chargeable. Therefore, neither upon the words, nor the meaning of the act, was this man removable, and so he gained a settlement.—*Buller* J. It is admitted that this is the first case which has come directly before the Court for a construction on this part of the statute. Now the words of the act cannot admit of a doubt. They only speak of persons *coming to settle* in a tenement of 10*l.* a-year, who cannot be removed. As to the question of fraud, I feel no force in that, because that question is open to the sessions in every case as it arises. Besides, it is the peculiar jurisdiction of the justices, and not of this Court, to say, whether the particular case be fraudulent or not; if they do not adjudge it to be fraudulent, it is not competent for this Court to say that it is. I doubt whether in this case the order of sessions might not be founded on the idea, *that it was fraudulent.* If they had said so, we should not have differed from them; but they have not found it so. Next, as to the question of *ability:* It seems to me that this idea is founded chiefly on the words of *South Sydenham* v. *Lamerton,* (*ante,* 580.) but the words, if attentively considered, will not warrant the construction put upon them; for the credit he has is only for the rent he has to pay, but that is only as between him and the landlord: the credit is given by the landlord. Ld. C. J. *Parker* first says, "If a man hires a house at a small rent, and pays a fine, yet if the house is worth 10*l.* *per annum,* it makes a settlement; for the set-

tlement depends on the value of the tenement, not on the *rent*." Then indeed he uses these words, "the reason of this statute is this; that a man who is intrusted with a tenement worth 10*l.* a-year, is of such credit, and must have such a stock, as makes him not likely to become chargeable to the parish." — *Eyre* J. took it to be within the letter and intent of the law, "that a man who is capable of renting a tenement of 10*l.* a-year should be settled in that parish." It is clear that they applied this reasoning to the persons mentioned in the former part of the act, to shew that that case did not come within the description: And this is put out of doubt by what *Pratt* J. says: "The mischief recited by the statute and intended to be prevented, is *vagrancy of poor persons* who used to come into parishes where there was the best stock; and the statute describes who are intended by those poor, (*viz.*) *such persons as are not capable of hiring a tenement of* 10*l. a-year*." Now it is material to consider, what was the case on which the Court were then speaking; they were speaking of a case where the taking was of *more* than 10*l. per annum;* therefore these expressions only relate to cases of above 10*l. per annum*, and are to be applied to the case then before them, and are not applicable to any case where the renting is not more than 10*l. per annum.* This is more decisive on account of what is said in the conclusion of the case; where, describing the poor persons whom the act intended to exclude from gaining settlements, *Pratt* J. says, "such persons as are not capable of hiring a tenement of 10*l.* a-year." There are no such words in the act; but if we have recourse to the preamble, it speaks of rogues and vagrants, and persons who are burthensome to the parish: These therefore are the persons of whom the statute speaks as likely to become chargeable; and therefore the expressions in that case are only to be considered as *particular instances of persons* who, from their situation in life, *were not likely to fall* within the description of persons in the preamble of the act. But one who is settled on a tenement of 10*l.* a-year is not within the act. It has been contended, that the pauper never had the tenement; but it is impossible for us to say so, after the justices have stated that he had it under an agreement, which made him a tenant at will; for what is to become of the estate after he had sown it with corn? Its being gained by gleaning is not material; for supposing he had stolen it, it would have been just the same; he would have been entitled to the growing crop; he was then in possession of a tenement of 10*l.* a-year, and could not have been turned out by his brother; therefore this is a sufficient taking of a tenement within the statute. — Order of sessions quashed. *See Rex* v. *Friswell, post,* 600.

Where a part of the tenement is held rent free, by the charity of the landlord.

R. v. Fillongley.

Rex v. *South Bemfleet, H.* 53 *Geo.* 3. 1 *M.* & *S.* 154. *Bott, Cont.* 126. 2 *Nol. P. L.* 29, 40. Removal from *Fobbing* to *South Bemfleet*, both in the county of *Essex.* The sessions, on appeal, confirmed the order, subject, &c. — Case: The pauper, *Henry Brewitt*, being legally settled in *South Bemfleet*, left that parish and went to *Fobbing*, where he rented and lived forty days in a house of the value of eight guineas *per annum*, having previously to and at the time of his quitting *South Bemfleet*, and during his residence in *Fobbing*, and when the order of removal was made, a freehold estate in *South Bemfleet*.

Occupant *tenant* in one parish cannot be coupled with an interest as *landlord* in another, so as to give a settlement.

Occupation as tenant with occupation or interest as landlord.

R. v. South-Bemfleet.

which he had let at the rent of 2*l.* 10*s.* *per annum.* — Ld. *Ellenborough* C. J. This can never be called an occupation of a freehold interest, where there was no occupation in fact, it being leased out to another, and without some occupation the pauper cannot gain a settlement. The cases have already gone far enough: the mode of reasoning adopted to-day would go to shew that having any interest whatsoever was an occupation, and if pushed a little farther would take in property in the funds.—*Le Blanc* J. The words of the statute are "*come to settle in any tenement;*" which have been sufficiently departed from already, when it was decided, that if a person take a tenement of the value of 10*l.* a-year, and underlet a part, he will thereby gain a settlement; but the ground of that decision was, that he had credit to be trusted with 10*l.* a-year. Here, however, the pauper had only credit for a less sum than 10*l.* a-year, *viz.* eight guineas a-year. But it is said he had property of his own elsewhere: of that, however, he was not the occupier; but an ingenious argument is raised from what fell from the Court in other cases, to shew that the principle of those cases is applicable to this, where he never occupied to the value of 10*l.* a-year, because it is said that he was not likely to be chargeable, but it is sufficient to say, that those cases are not like the present, and that there is no case which seems to have gone the length contended for.—*Bayley* J. According to the argument, if a person having property of his own of 5*l.* a-year value in *Cornwall*, leased it out, and came to occupy a tenement of 5*l.* a-year in *London*, that would be coming to settle in a tenement of 10*l.* a-year, and the party would gain a settlement in *London*. Such a construction of the act would be a violent departure from the words of it. Order of sessions confirmed.

Occupation as tenant cannot be coupled with occupation as landlord.

Rex v. *St. John's, Glastonbury*, *E.* 58 *Geo.* 3. 1 *B.* & *A.* 481. A pauper, by occupying a freehold estate of his own, and also other lands as tenant, the whole being of the aggregate annual value of 10*l.*, does not thereby gain a settlement, it being necessary under the 13 & 14 *C.* 2. *c.* 12. that he should come to settle on all the property in the character of tenant. — Ld. *Ellenborough* C. J. said, The argument in this case has brought back to my mind the decision in *Rex* v. *Bowness*, 4 *M.* & *S.* 210, *ante*, p. 546. I think that the coming to settle, in the 13 & 14 *C.* 2. must mean *to settle as tenant;* the act having said, that persons who shall come to settle on a tenement of the value of 10*l.* shall not be removable, must be construed to imply that they shall be removable, if the tenement be of less value. Now it is clear that at that time a man was not removable who resided on a tenement of less value than 10*l.*, if that tenement were his own property: the legislature therefore could not have contemplated a residence on a man's own property, when they used the words, 'coming to settle on a tenement.' What is reported to have fallen from me in *Rex* v. *Bowness*, was certainly not to be considered as an *obiter dictum*, but it is confirmed by the authority of Ld. *Kenyon* and Mr. J. *Lawrence* in the cases cited.

59 G. 3. c. 50.

By stat. 59 *Geo.* 3. *c.* 50. it is enacted, that (after *July* 2. 1819,) no settlement shall be gained, "unless the whole of such land," *ante*, p. 539, 540. (*i. e.* the land occupied by the person claiming a

settlement) "shall be situate within the same parish or township as the house wherein the person hiring such land shall dwell or inhabit."

Joint occupation.

(4.) Of Joint Occupation.

With respect to the taking or occupying a tenement jointly, it has been determined as follows:

Marden v. *Barham*, *M.* 25 *Geo.* 2. *Burr. S.C.* 311. 2 *Bott*, 134. 2 *Nol. P. L.* 37. Two persons jointly hired a house and land at *Marden* for 16*l.* a-year, and jointly occupied the house and tilled the land for the said year, and jointly paid the rent, that is, each the like sum. It was urged that this gained no settlement to either of them. And a case was cited, between *Croft* and *Gainford*, at *Durham* assizes 1733, (2 *Bott*, 130.) which was a joint taking of 14*l.* a-year, each paying separately, the landlord not caring to let to either singly. — And the two judges, (Ld. C. J. *Eyre* and *Reeve*) to whom it was referred, held it no settlement: because the statute requires the person's taking a tenement of 10*l.* a-year value; whereas this practice of calling in a partner in the taking would, if admitted equivalent to a sole taking, evade and frustrate the statute, and let in an indefinite number of families all to be settled upon one tenement of 10*l.* a-year value. On the contrary it was argued, that each was legally tenant of the whole, both being liable to the landlord for the whole rent.—By the Court: This was not sufficient to gain a settlement. Whatever remedy the landlord might have against the occupiers of the land for his rent, the act of parliament in the present case considers only the right; which clearly is but to one-half, and that half doth not amount to the value of 10*l.* a-year.

Renting jointly a tenement which when divided as to value between the tenants, will not produce 10*l.* a-year for each tenant, will give no settlement to either of the parties.

Little Tew v. *Duns Tew*, 29 & 30 *Geo.* 2. *Burr. S. C.* 398. 2 *Bott*, 118. 2 *Nol. P. L.* 37. 49, 50. *Richard Guffkyns*, the pauper, together with *John Goodwin*, his father-in-law, rented a tenement at *Duns Tew*, at 81*l.* a-year, as partners; and lived there twelve years. And being about to leave *Duns Tew*, *Goodwin* alone went to Mr. *Keck*'s agent at *Little Tew*, and took a farm of 52*l.* a-year, for four years. After the said taking, and before the farm was entered upon, *Guffkyns* enquired of *Goodwin*, whether he depended upon his going with him to *Little Tew?* To which *Goodwin* replied, that he did; for he could not go without him. They both removed from *Duns Tew* to *Little Tew*, with their whole joint stock, to the value of more than 100*l.*; and managed the farm together for seven years, both of them residing thereon. Mr. *Keck* gave his receipts for the rent to *Goodwin* only; and once, when Mr. *Keck* distrained for rent, the distress was made upon the stock, which Mr. *Keck* supposed to be *Goodwin*'s only; and *Goodwin* alone gave a bill of sale of the stock; and *Guffkyns* then stood by without interposing. At the end of seven years, just before the order of removal was made, *Guffkyns* went off from the farm, and *Goodwin* took the whole stock, allowing *Guffkyns* 62*l.* for his moiety thereof. It was adjudged by the justices, that this being not a joint hiring, but a taking by *Goodwin* only, *Guffkyns*, the pauper, did not hereby gain a settlement. On removal of this cause into the court

Renting jointly 52*l.* a year gains a settlement; and where one originally takes a farm of that value, and then takes a partner, the latter will also gain a settlement.

Joint occupiers.

Little Tew v. Duns Tew.

of K. B., it was observed by the Court, that the words of the statute are, *coming to settle in any tenement under the yearly value of* 10*l*. That the agreement between the two farmers was, to occupy jointly, with a joint stock: that the case doth not turn only upon the credit given to the tenant by the landlord, but upon the credit given by the legislature to a man able to stock a farm of such a value: a tenant may let the whole, or even subdivide it out to under-tenants, who may thereby gain a settlement, if the tenement be above 10*l*. a-year. And where is the difference between the original tenant's letting out part, and his taking in a partner? — And after having taken time to consider of it, the resolution of the Court was, that *Guffkyns* gained a settlement in *Little Tew*. For, being taken in partner by *Goodwin*, he is to be considered as having an interest in the farm, at least as tenant at will to *Goodwin* of the moiety of a farm worth 52*l*. a-year for the whole of it, and consequently his moiety above 10*l*. a-year. A tenancy at will, even in the case of a certificate person, is sufficient to gain a settlement, as was determined in the case of *Cranley* v. *St. Mary's, Guildford, H.* 8 *Geo.* 1 *Str.* 502.

Being joint partner with a person of a farm of 176*l*. a-year, gains a settlement.

Rex v. *Seamer, H.* 36 *Geo.* 3. 6 *T. R.* 554. 2 *Bott*, 127. 2 *Nol. P. L.* 49. *John Yates* and his wife and family were removed from *East Haslerton* to *Seamer;* the sessions confirmed the order, and stated the following Case: *T. Yates*, brother of the pauper, took a farm of Sir *C. Sykes*, Bart. at *East Haslerton*, at 176*l*. a-year. *John* resided with him upon the farm, they having agreed to be joint partners in the stock and farm previous to *Thomas*'s taking it, but *John* did not consider himself as tenant to Sir *C. Sykes*. *John* advanced 120*l*. towards the stock and farm. *Thomas* was the only person rated in the parish rates, though *John* said he conceived himself answerable for the payment of his part, and to pay interest accordingly. After seven months they parted: there was no account of receipts and disbursements. Upon parting it was agreed, that *John* was to allow 20*l*. out of what he had advanced, and to be repaid the remainder, which took place. — The Court, without argument, were of opinion, that this case was governed by the above case of *Little Tew* and *Duns Tew*. And Ld. *Kenyon* C. J. added, that, whether the pauper were considered as a joint tenant with his brother, or as under-tenant, he equally gained a settlement in *East Haslerton*. Both orders quashed.

Renting one entire tenement and jointly part of another, will, if the whole be of sufficient value, gain a settlement.

Rex v. *Tissington, E.* 33 *Geo.* 2. *Burr. S. C.* 499. 2 *Bott*, 134. 2 *Nol. P. L.* 31. The pauper, *Isaac Wibberly*, being settled at *Tissington*, took a farm in *Kniveton* of 8*l*. a-year; and also at the same place, jointly with one *Thomas Hill*, took another farm of 3*l*. 15*s*. a-year, and at the taking of the said farm of 3*l*. 15*s*. it was agreed between the said *Isaac Wibberly* and *Thomas Hill*, that *Thomas Hill* should have and take one-half of the corn and hay of the said 3*l*. 15*s*. farm: and that the said *Isaac Wibberly*, after that the said *Thomas Hill* had taken and carried away his half part of the said corn and hay, should have the whole farm of 3*l*. 15*s*. till *Lady-day* following, paying to the said *Thomas Hill* 4*s*. for the said *Hill*'s share of the said farm. The question was, whether this were a tenement of the yearly value of 10*l*.? The counsel for the parish of *Tissington*

Joint occupiers.

R. v. Tissington.

argued, that *Wibberly*, the pauper, was liable (as being joint tenant with *Hill*) to answer for and pay the whole 3*l.* 15*s.*; and moreover, that he was sole tenant of that farm for and during the last half-year; or, even taking it at the strictest, that he was really and properly to pay 10*l.* 1*s.* 6*d.* a-year; for he is to pay 8*l.* and half of 3*l.* 15*s.* (which is 1*l.* 17*s.* 6*d.*, and 4*s.* more for the last half year,) which is in all 10*l.* 1*s.* 6*d.* — But the Court unanimously held, That this tenement, thus rented in *Kniveton*, was under the yearly value of 10*l.* The act fixes the value at 10*l.* And the value must be estimated by the rent, and always is taken to be according to the rent. (*a*) And here the rent is 8*l.* a-year, and the half of 3*l.* 15*s.*; which two rents taken together do not amount to 10*l.* Indeed he was to pay *Hill* 4*s.* for the advantage he was to have, after the crop was off: but an agreement of this sort, between the two joint tenants, cannot be considered as rent.

Renting a farm of 11*l.* a-year, and afterwards occupying it jointly with another person, does not prevent gaining a settlement, by the person originally taking.

Rex v. *Newnham*, *T.* 13 *Geo.* 3. *Burr. S.C.* 756. 2 *Bott*, 121. 2 *Nol. P. L.* 38. 55, 56. The pauper, *Hathaway Denton*, and one *Richard Mann*, his wife's father, jointly rented and occupied an estate at *Newnham* of 80*l.* a-year, for three years. The said *Richard Mann* dying about the end of that time, the said *Denton* soon afterwards did alone take a house of one *Richard White* at *Awre*, of the yearly rent of 3*l.* and another estate consisting of lands of one *John Sergeant* at *Awre* aforesaid, at the yearly rent of 8*l.* The said *Richard Mann* leaving a widow, and she and the said *Denton* being upon the death of the said *Richard Mann* jointly possessed of the remainder of the stock, which had been on the estate at *Newnham*, they the said *Hathaway Denton* and the said widow went and lived in the said house at *Awre*, and jointly occupied that house and the said estate of 8*l.* a-year, for one year, the stock on the said house and estate being partly the property of the said *Denton*, and the other part the property of the said widow; and sometimes one of them sold some part of the said stock, and received the money for the same; and at other times, the other of them sold other parts of the said stock, and received the money for the same: and at the time of taking the said tenements by *Denton*, neither the said *Richard White* nor the said *John Sergeant* knew of any connection subsisting between the said *Denton* and the said widow. A moiety of the stock was more than sufficient to stock the said house and farm. — (Ld. *Mansfield* was not in court.) The other three judges declared themselves all thoroughly satisfied, that the settlement was in *Awre*. Mr. J. *Aston* observed, that if two persons jointly take a tenement of less annual value than 20*l.* this will not gain a settlement to either of them. But a man who takes more than 10*l.* in yearly value, may let part of it to under-tenants: and this will not destroy his settlement, though it will not gain one to such under-tenants, who pay him less than 10*l.* a-year, as was determined in the (following) case of *Rex* v. *Llandverras*. This woman, the widow *Mann*, was in the nature of an

(*a*) That is, if no more be stated: but it is in the power of the sessions to examine whether the rent actually paid, be or be not the *real* value; if it be more or less, the sum proved in evidence is to be accounted the real value.

Underletting.

R. v. Newnham.

under-tenant to the pauper. The pauper had the credit of taking the tenement. He alone took the house, and likewise the lands. Neither of the landlords knew of any connection between the widow and him; and he only was personally responsible for the rent. They were not partners in taking the tenement, though they were joint occupiers of it. She would gain no settlement by merely being a joint occupier, without having been concerned in taking it. Nor shall the person who alone took it lose his settlement by letting in a joint occupier.

Renting 10*l.* a-year, although part of it be let off afterwards by the tenant to under-tenants, gains a settlement.

Rex v. *Llandverras, M.* 7 *Geo.* 3. *Burr. S. C.* 571. 1 *Blac. Rep.* 603. 2 *Bott*, 134. 2 *Nol. P. L.* 61. *Evan Hughes*, father of the pauper, rented a tenement of 10*l.* a-year, and paid the rent to the landlord, He lived for above forty days in a part of it, which part was of the value of 40*s.* only. And immediately after his taking the tenement, he let the residue thereof to under-tenants, without residing thereupon at all himself. It was argued, that being liable only to the rent did not gain him a settlement. He must occupy as well as take a tenement of 10*l.* a-year value, and he ought to occupy the whole 10*l.* a-year; otherwise, many different poor families might be introduced into a parish upon one such taking. It would quite evade the act if the mere taking of a tenement would do; for then one would gain a settlement by taking, and another by occupying the same tenement. — By the Court: In case of a gross fraud, the sessions no doubt will find it so, and the settlement would be void. But no fraud being found, there is no doubt upon the law of the case, but that *Hughes* was the tenant and liable to the rent, and had credit for the whole; and therefore he is as much settled as if he had rented a tenement of 10*l.* a-year, and let lodgings. The act doth not require a person renting a tenement of 10*l.* a-year to occupy it; it is enough if he rents it, and resides forty days in the parish. The ground the act goes upon, is a person's having credit sufficient to hire a tenement of that value. This man appears to have had such credit. The under-tenants do not take a tenement of the yearly value of 10*l.*, therefore they do not hereby gain a settlement; but see *Rex* v. *Bardwell*, 2 *B.* & *C.* 163., and 2 *Nol. P. L.* 61. *n.* (5.)

Vide Rex v. *North Collingham ante*, p. 567. (*d*)

(5.) Who may gain a Settlement by renting a Tenement:

and herein, *as to the question, to whom credit is given: and next, as to the character in which a person rents a tenement: and, lastly, as to the ability of foreigners in this respect.*

It is immaterial whether a surety be taken for the rent.

Rex v. *Butley*, *T.* 10 & 11 *Geo.* 2. *Burr. S. C.* 107. 2 *Bott*, 93. 2 *Nol. P. L.* 43. In this case it appeared that the pauper took a lease of a windmill in *Benhall*, for three years, but had a surety who engaged for the payment of the rent thereof for the said three years. And *Page* J. said, that the parish officers had nothing to do to look into the fact of the giving of the security. That it is the credit of the taking such a tenement that is the point.

Same point: and the question is on these cases, whether the pauper were *tenant* or not:

Rex v. *Hooe*, *M.* 44 *Geo.* 3. 4 *East*, 362. 2 *Bott*, 143. 2 *Nol.* 28, 43, 55. The pauper took a house in *Hooe* at 11*l.* *per annum* of one *Pococke*, then overseer of the poor of that parish; previously to this taking, one *Porter* had agreed to take part of the premises at 5*l.* *per annum*, and the pauper would not have

given so much for the premises if *Porter* had not promised to take a part of them under him. *Porter* guaranteed the rent to *Pococke*, who would not have let the premises without such guarantee. But when the agreement was made between the pauper and *Pococke*, the latter said expressly he made the agreement with the pauper only, and considered none but him as his tenant. The sessions stated also that they were of opinion there was no fraud, and that upon the whole of the facts, credit was given to the pauper for 6*l.* only, and that for the residue credit was given to *Porter* only. — Ld. *Ellenborough* C. J. The stat. 13 & 14 *C.* 2. gives authority to two justices on complaint within forty days after any person " shall *come to settle* in any tenement," &c. No doubt this was a *coming to settle* by the pauper. Then it says, " upon any *tenement;*" that includes the character of tenant in which he comes to settle, which is the principal question here: and then the value, which must be 10*l.* a-year to confer a settlement: and here the value of the entire premises was 10*l.* a-year. Now, as to the principal question, the pauper was to all intents and purposes tenant of the legal estate for the whole: fraud being excluded by the sessions. He was liable to all the liabilities of a tenant. It is stated that the pauper *took* the premises of *Pococke* at the rent of 11*l.*, and *Pococke* said that he demised to the pauper only. Then shall it be said that he had not the whole interest in him, because a surety was required for the rent? Having such a surety has been holden to make no difference. Then where there is a tenement of sufficient value, and a tenant not removable, who is liable to all the burthen of a tenant, and all the liabilities of one, and against whom, as such, every proceeding in law may be had, he gains a settlement by forty days residence on such a tenement. — And *Grose* J. said, that it was not necessary the pauper should have paid the rent; it was sufficient he had credit to be trusted with a tenement of the annual value of 10*l.* It was not necessary for the tenant to have paid the whole rent; for though the rent were paid by others, yet as he had credit for the whole premises it was sufficient: and he shewed that he deserved that credit in the present instance, for he actually paid the whole rent. (*As appeared also by the case stated.*) — And *per Lawrence* J. It is argued that unless credit were given to the pauper for 10*l.* a-year in value of the rent, no settlement can be gained by him. But I do not know that that is a necessary conclusion. The stat. 13 & 14 *C.* 2. *c.* 12. gives power to the justices to remove, on complaint within forty days, any person " who shall *come to settle* in any tenement *under* the value of 10*l.* &c.," unless certain things are done which are required by that statute; but they have no power given to them to remove any person coming to settle in a tenement of that value or upwards. Such a person is not submitted to their jurisdiction at all. The question, therefore, is not a question concerning the credit of the party, but whether in point of fact he came to settle; *i. e.* acquired the interest of a tenant in a tenement of that value; for if he did, the justices had no power to remove him. Now, upon the facts stated, it is apparent that the pauper had an interest to that amount in a tenement, as the tenant thereof, which prevented him from being an object of removal. — *Per*

Of sureties for the due payment of rent.

and whether he acquired the interest of a tenant to that value.

Pauper the actual tenant, credit given to another.

Credit need not be given to the pauper for the rent, if he be

Of sureties for the due payment of rent.

the tenant of the whole premises.

Tenement taken by the wife of a soldier who had deserted, and who returns and remains concealed in it for seven weeks.

Le Blanc J. It is immaterial whether credit were given to the pauper for the rent, if he were the tenant of the whole premises.

Rex v. *Ashton-under-Lyne, M.* 56 *Geo.* 3. 4 *M. & S.* 357. Removal from *Southcoates* to *Ashton-under-Lyne.* — The sessions confirmed the order, subject to the opinion of the Court of K. B. on the following Case: — In 1803, *S. Mills* being settled at *Ashton-under-Lyne* and married to the pauper, enlisted into the king's service, and in 1809, deserted from it, leaving his wife and children in *Southcoates.* Afterwards the pauper took a house in *Southcoates* at 5*l.* a-year rent, and resided in it with her children to the time of her removal, which was a period of several years. During the time of her residence in this house, she took another house from one *Dean* at five guineas a-year rent, and put some of her husband's furniture into it, intending at the time to remove from the house where she was then living into *Dean's* house, but she never did remove, but underlet it to another person. *Dean* considered the pauper as liable for the rent, and at the expiration of the first quarter called upon her for payment of it. During this quarter her husband came to see her, and remained for seven weeks of it concealed in the house in which she resided. Both that house, and the house taken of *Dean,* were taken without the privity of her husband, but the fact of their having been taken was communicated to him at the time of this visit. *Dean* never considered her husband as his tenant, nor ever knew of his being in existence. The question was, whether the pauper's husband acquired a settlement in *Southcoates.* — After argument, Ld. *Ellenborough* C. J. said, This is a new head of settlement *latitando;* but it appears to me that it would be a gross perversion of terms to say that this pauper came to settle in a house, when he only came to it for the purpose of concealing himself from the search of those who had a right to his service, and when the most that can be said of his residence is, that the wife does not turn him out. But the wife was the ostensible party; she it is that makes the contract in her own name, and nothing is ever done on the husband's part to ratify it in any way. His coming into the parish therefore was nothing better than the mere intrusion of a fugitive who is lurking in hiding places, and was not in any sense a coming to settle, that is, not a coming into the parish *animo residendi.* Order confirmed.

Rex v. *St. Michael in Coventry, E.* 52 *Geo.* 3. 15 *East,* 567. *Bott, Cont.* 125. 2 *Nol.* 5. 45. *Stephen Merrall,* his wife, and children were removed from *St. Margaret* in *Leicester,* to *St. Michael* in *Coventry,* which order was confirmed on appeal, subject, &c. Case:— The respondents proved that *Stephen Merrall* was duly bound apprentice in 1782, to *Ann Goodall* of *St. Michael* in *Coventry,* for seven years, and served her in that parish about five years and a half; many years afterwards, (viz. in *October* 1810,) he took a house in *St. Margaret, Leicester,* of the annual rent of 4*l.* 15*s.* which he gave up on the 5th of *July,* 1811. On the 8th of *April* 1811 he agreed with a Mr. *Bradley* for a house and shop in *St. Margaret,* at the annual rent of 13*l.* 13*s.* which house was then in the tenure of *Goff,* who was to be tenant thereof to *Bradley* till the 5th of *July* following. The pauper was to commence tenant from the 5th of *July,* and to

pay rent from that time. On the 15th of *June*, by permission of *Goff*, the then tenant, the pauper put part of a stocking-frame into the said shop, and received the key of the shop from *Goff*, for the purpose. On the 17th of *June* he put in the remainder of the frame, and on the 22d and 24th of the same month he put other frames in. On the 25th of *June* the pauper's daughter went to the shop to work, on which day the pauper found the key of the house in the outward door, and took it and put some goods therein by permission of *Goff* the tenant, and *Bradley* the landlord, and he continued to take articles of furniture to the house as he went backwards and forwards to work at the shop from the 25th of *June* until the 3d of *July*, when he and all his family went to sleep there, having slept until that day in the first-mentioned house. *Goff* paid the rent for *Bradley*'s house and shop up to the 5th of *July*, but left the house on the 25th of *June*, and went into an adjoining one. From the 28th of *June* until the removal took place the pauper continued to receive relief from *St. Margaret*'s parish, his wife being ill, on which account he had applied for and received relief from the same parish some days before. The pauper was neither tenant of, nor occupied Mr. *Bradley*'s house for forty days, nor did he ever pay any rent for the same. — After argument, Ld. *Ellenborough* C. J. said, It is assuming more than the facts of the case warrant, to say, that the landlord consented to the pauper's occupation as tenant on the 25th of *June*. The landlord could neither put him in nor turn him out, for another person was the occupier and tenant of the premises. Then the tenant's leaving the key in the door only shewed his consent to the pauper's putting his goods into the house, and the question is, whether a mere liberty of that sort is an occupation. In *Rex* v. *Aldborough*, (1 *East*, 597.) there was a tenancy created in express terms, but here the pauper stood in no relation of tenancy to the premises at the time. He never got into the period of his tenancy, but while he was in the house, upon an expectation only of becoming tenant, he was removed. — *Grose* J. The pauper's occupation as a tenant is expressly negatived by the case. — *Le Blanc* J. I do not see how the objection can be gotten over, that at the time of his removal the pauper's interest had not commenced. Orders confirmed.

Possession without tenancy.

R. v. St. Michael, in Coventry.

Rex v. *Netherseal*, *E.* 31 *Geo.* 3. 4 *T. R.* 258. 2 *Bott*, 126. 2 *Nol. P. L.* 41. *Thomas Taylor* and his wife and children were removed from *Finderne* to *Netherseal*. The sessions confirmed the order, and stated the following Case: — That the pauper being settled in *Netherseal*, married the daughter of *J. Shipman*, of *Finderne*, who rented and lived upon a tenement there of the yearly value of 11*l*. The pauper and his wife continued to live in the family of *Shipman* until his death, which happened about two years after the pauper's marriage. *Shipman* made a will, and, after bequeathing to his son and an unmarried daughter 5*s*. each, gave the pauper's wife all the rest of his property and stock upon his tenement, of the value of upwards of 40*l*. and appointed her executrix of his will. The pauper possessed himself of this property, and paid the above legacies about a year after *Shipman*'s death. The pauper's children got the will out of a box and tore it to pieces. The pauper never proved the will on account of the expence, but continued with his wife, the

An express contract is not necessary: it is sufficient if residence be with the permission of the landlord.

Tenancy by executorship.

R. v. Netherseal.

executrix, to occupy the tenement in *Finderne*, from the decease of *Shipman* on the 9th of *Nov.* 1774, until the *Lady-day* following, and paid the rent for the same. — Ld. *Kenyon* C. J. thought if the question had depended on the title the pauper claimed under the will, it would not have been sufficient to give a settlement. But it being stated that the pauper resided for more than forty days on a tenement of more than the yearly value of 10*l.* for which he paid rent, he had no doubt; although it was said that he might have been turned out of possession by some other person having a superior right; but it was not suggested who had any better title; and the landlord who received the rent could not turn him out. — *Ashhurst* J. In order to acquire a settlement by taking a tenement of 10*l.* a-year, it is not absolutely necessary that there should be an express contract for the tenement; it is sufficient if the tenant reside forty days on a tenement of such a value with the permission and consent of the landlord; for in such case the law implies a contract. — *Buller* J. Supposing there were no will in this case, the only persons entitled to the property of the pauper's wife's father were the pauper's wife and her brother and sister, and if it were necessary to go beyond the implied contract between the landlord and the pauper, here is sufficient evidence to shew that all the parties interested consented to the pauper's continuing in possession of these premises, for the other son and daughter received 5*s.* each in lieu of all their right and claim to their father's property, therefore all the parties interested agreed to this occupation by the pauper, and consequently there is no pretence to say that this was a holding by wrong. — *Grose* J. of the same opinion. Both orders quashed.

A toll-keeper may gain a settlement by renting a tenement in the parish in which he keeps the toll.

Rex v. *Denbigh*, *T.* 44 *Geo.* 3. 5 *East*, 333. 2 *Bott*, 113. 2 *Nol. P. L.* 30. *R. Hughes* agreed with the toll-keeper in *H.* to go and receive the tolls in the turnpike house in *H.* as the servant, and for the use of the toll-taker, for which he (*Hughes*) was to be paid 3*s.* 6*d.* *per* week. *Hughes* went, and whilst there he took a field in *H.* of the value of 12*l.* a-year. During this time he, his wife and family continued residing in the toll-house. The removal was from *Denbigh* to *Huellan.* And the sessions quashed the order, upon stat. 13 *Geo.* 3. *c.* 84. § 56. enacting that "no gate-keeper of any turnpike road shall be removable from such toll-house, &c. unless actually chargeable to the parish. And that no such gate-keeper residing in such toll-house, shall thereby gain a settlement in any parish or place whatsoever, &c." It was argued that the word *thereby* included the "*residence in the toll-house:* and that such residence should not be contributable to the settlement. But the Court said, that the act only meant that a settlement should not be gained by keeping the gate *or renting the tolls*, and residing in the toll-house. But that does not prevent him from gaining a settlement *aliunde* in the same parish where the toll-house is situated: that here a close worth above 10*l.* was rented in the parish, and there was residence in the parish. He did not even rent the tolls: he was merely the servant of another. Order of sessions quashed.

A person, renting the tolls and residing in the turnpike house erected by order

Rex v. *Inhab. of Elvet*, *E.* 49 *Geo.* 3. 11 *East*, 93. *Bott, Cont.* 119. 2 *Nol. P. L.* 30. Removal of *Frances*, the widow of *John Taylor*, and her children by name, from *West Rainton* to *Elvet*, in the county of *Durham*. The sessions confirmed

the order. By stat. 30 *Geo.* 3. *c.* 67., intituled, "An act for paving, lighting, watching, and regulating the streets, &c. of the city of *Durham* and borough of *Framwellgate* and suburbs thereof, and streets thereto adjoining; for removing and preventing nuisances, &c. &c.," certain commissioners are appointed for carrying the above purposes into effect, and to enable them so to do, the act authorises them to take certain tolls, and appoint proper persons to collect them in the streets of *Durham;* by the 32d clause it is provided, that if instead of collecting the said tolls in this manner, it should appear to the commissioners more expedient to collect the same at toll-houses or turnpikes, it should be lawful for them to erect two turnpikes on the great north road, one to the south, the other to the north of the city, for the purpose of collecting the tolls, and that the right and property of all such turnpikes and toll-houses should be vested in the commissioners; and the 36th clause empowers the commissioners to lease the tolls: by virtue of this act the commissioners erected a turnpike-gate and house for collecting the tolls at the place called *Farewell Hall,* upon the great north road, within *Elvet,* and in 1796, demised the same with the tolls to one *Reather,* for three years, who on the 23d *August,* 1796, leased the same by indenture to *Elizabeth* and *John Taylor,* for three years, at the yearly rent of 202*l.*: under this lease *John Taylor* alone entered into the toll-gate and house, and continued to reside there with his family, collecting the tolls for the said term. The tolls were collected and appropriated to the general purposes of the act; neither the tolls nor the gate-houses, nor the respective lessees, were assessed to the poor's rate. The sessions were of opinion, that the said gates and toll-houses were not such turnpike gates and houses, as are within the meaning of the 56th section of the general turnpike act [13 *Geo.* 3. *c.* 84.*], and that therefore the pauper's husband acquired a settlement in *Elvet* by residing at the *Farewell Hall* turnpike, and renting the said tolls and gatehouses there. — By § 56. of the general turnpike act, "No gate-keeper of any turnpike road, or person renting the tolls thereof, and residing in any toll-house belonging to the said trust, shall be removeable from such toll-house till actually chargeable, and no such gate-keeper, &c. shall thereby gain any settlement." — In support of the order of sessions it was contended, that the above-mentioned clause in the general turnpike act was confined to toll-gate keepers, &c. appointed by the trustees of turnpike roads, to collect the tolls for such turnpike roads: whereas, the tolls here were collected by order of the commissioners appointed by a local act for various local purposes, amongst others for repairing the streets of the city of *Durham,* and not for the repair of turnpike roads within the meaning of the general turnpike act. — *Per curiam.* There is no difference in effect, though the appellation of turnpike road does not occur in the local act, the one is a stone road, and the other a gravel road, and every character belonging to a turnpike road belongs as well to this: the commissioners are trustees for the repair of the roads, and this case is within the prohibition of the 56th clause in the general turnpike act. Order of sessions quashed.

Toll-keeper. — of the commissioners appointed by stat. 30 G. 3. c. 67. for paving, lighting, and regulating the streets of *Durham,* and for other local objects, cannot gain a settlement in the parish, by the general turnpike act, 13 G. 3. c. 84. § 56.

* Now repealed by stat. 3 G. 4. c. 126

Rex v. *Bubwith, E.* 53 *Geo.* 3. 1 *M.* & *S.* 514. *Bott, Cont.* 123. 2 *Nol. P. L.* 30. An order for the removal of *John Massey,* &c.,

Renting the tolls of a bridge

Tolls of a Bridge.

vested by act of parliament in a company of proprietors, will confer a settlement, though the tolls are made personal estate, and the renting is not stated to be by deed.

from the township of *Bubwith* to the township of *Foggathorpe*, both in the East Riding of the county of *York*, was discharged by the sessions, subject to the opinion of the Court of K. B. on the following Case: It appeared to the Court that the said *John Massey* had become settled at *Foggathorpe* by hiring and service, but that after having obtained such settlement, he rented for one year the tolls and toll-house of *Bubwith* bridge, in the township of *Duffield*. These tolls were collected by virtue of an act of parliament passed in the 33d *Geo.* 3. intituled, "An act for building a bridge over the river *Derwent*, at or near *Bubwith* ferry, in the East Riding of the county of *York*, and making proper approaches thereto;" which act is agreed to be taken as part of this case. The tolls and toll-house were of the annual value of 70*l*. The value of the toll-house alone was less than 10*l*. *per annum*.—Against the order of sessions, it was contended that these tolls did not amount to such an interest in land, as would constitute a tenement; they were merely payments for the liberty of passing over the bridge, which the act has declared to be personal property. The proprietors, therefore, could only demise such an interest as the act vested in them, which was only a personal interest belonging to them as adventurers in the bridge. And that there was a further objection arising upon the 13 *Geo.*3. *c.*84. § 56. (the general turnpike act) which prohibits any gate-keeper or person from gaining a settlement by renting the tolls of turnpikes, or residing in any toll-house; and although the present act had no similar clause, yet the bridge, being a part of the turnpike, was within the provisions of the general act: although the bridge were not expressly vested in the trustees of the turnpike, still it must be considered as a branch of the turnpike. In *Rex* v. *Elvet* (*ante*, p. 592.) it was so considered, although the words "turnpike-road" were not used in the local act.—Ld. *Ellenborough* C. J. It is true the words "turnpike-road" did not occur in the act upon which *Rex* v. *Elvet* was decided. But the commissioners under that act were trustees of the road; and it was to all intents considered as a turnpike-road. As to the renting, it is enough for us to decide on the doubts which the sessions actually entertained; and they have not stated any doubts upon that subject; for they have stated simply that the pauper rented the tolls, which must be understood a legal renting. Then the only question remaining is, whether tolls are a tenement. There is no doubt that they are so generally; but it is said that here they cannot be so, because the act has made the shares of the proprietors personal estate. That, however, does not make them less a tenement in the hands of the persons to whom demised: suppose the act had vested the shares in the proprietors for a term of years, they would still have been a tenement.—*Le Blanc* J. In *Rex* v. *Elvet* the Court deemed it a turnpike-road; the act enabled the commissioners to erect turnpikes on the high road. Order of sessions confirmed.

The prohibition of the general turnpike act does not extend to the tolls of a bridge which does not appear to be a part of the turnpike-road.

Rex v. *North Duffield*, *M.* 55 *Geo.* 3. 3 *M.* & *S.* 247. 2 *Nol. P.L.* 30. Removal from *Spaldington* to *North Duffield;* confirmed, subject, &c. Case: By stat. 33 *Geo.* 3. "for building a bridge over the river *Derwent*," &c., certain persons are constituted a corporation, by the name of the Company of Proprietors of the *Derwent* Bridge, and are empowered to have a common seal, &c. In pursu-

The occupation of the toll-house and tolls of a bridge demised for a year by five members of a managing

ance of this act a bridge was built over the *Derwent*, called *Bubwith Bridge*, and a house erected, where the tolls are collected by virtue of the act. In *February*, 1811, the pauper entered into the occupation of this toll-house, and the tolls there received, in pursuance of an instrument of that date, by which five persons, therein described as five of the members of a committee appointed for managing and carrying on the affairs and business of the company of proprietors of *Derwent* bridge, demised to the pauper, his executors, administrators, and assigns, the toll-house and toll-bar, together with the pontage and tolls, dues, payments, and duties arising therefrom, to hold for one year, at the rent of 126*l.* by monthly payments: and the pauper, together with one *Holtby* his surety, covenanted with the said five persons to pay to the said company, or their treasurer, the said yearly rent, at the several times; and that in default thereof it should be lawful for the company or their treasurer to enter upon the toll-house, &c. and receive the tolls, &c. This instrument was signed and sealed by the respective parties, but the seals of the said five persons were only their private seals, and the corporation seal was not affixed to this instrument. The pauper continued in the occupation of the toll-house and the tolls above forty days, and paid rent for the same. The toll-house is situate and the tolls receiveable in the township of *North Duffield*. The annual value of the toll-house did not exceed 5*l.*, but the annual value of the tolls greatly exceeded 10*l.*, and they were let for 70*l.* — After argument, Ld. *Ellenborough* C. J. said, The residence in the toll-house, if it had been of sufficient value, might have answered the purpose of a settlement, but there the value fails; and the tolls are not things which lie in tenure, but only in grant; therefore, without a deed, an interest in them could not pass. In the case cited, *Wood* v. *Tate*, 2 *N. R.* 247., putting the lease out of the question, the party admitted a tenancy by the payment of rent. — *Per Curiam.* Orders quashed.

Foreigner. Soldier.

committee under their own seals, but not under the corporation seal held not to confer a settlement, the annual value of the toll-house alone not exceeding 5*l.*

Rex v. *Eastbourne*, *T.* 43 *Geo.* 3. 4 *East*, 103. 2 *Nol. P. L.* 134. Removal of *Ann Borchert* and her four infant children by name, from *Seaford* to *Eastbourne:* and confirmed by the sessions. *Ann B.*'s maiden settlement was in *Eastbourne;* she married *J. B.* a *German*, by whom she had the children mentioned in the order. The said *J. B.* was, at the time of the removal, resident in a house at *Seaford*, of above the value of 10*l.*, exercising therein the trade of a baker. His trade declined at *Seaford*, and he thereupon thought he could exercise it with more advantage at *Eastbourne*. The wife and children thereupon became chargeable, and were removed as above. The husband acquiesced in every thing which took place with regard to the removal; accompanied them to *Eastbourne*, and afterwards continued to reside there with them. — Ld. *Ellenborough* C. J. This man was not an alien enemy, but a *German* by birth; an alien amy; and as such, though he may not take a lease of a dwelling-house or shop, yet he may occupy a tenement of 10*l.* a-year, and carry on his trade there like any other person. Then he has that interest which may enable him to gain a settlement by the provision of the legislature. Orders quashed. See *ante*, p. 266, 267.

A foreigner may gain a settlement by renting a tenement.

Rex v. *Brighthelmstone*, *H.* 58 *Geo.* 3. 1 *B. & A.* 270. Two justices removed *William Lancaster* and his four children from

A soldier whil his regiment

Residence.

lay in barracks at *B.* took a house there for himself and family, of the yearly value of 10*l.*, and resided therein more than forty days: held that this was a coming to settle in a tenement, and that he thereby gained a settlement.

Gloucester to *Brighthelmstone.* The pauper had been serjeant of one of the companies in the *South Gloucester* militia, which lay in barracks at *Brighthelmstone*, and performed all the duties, and received all the advantages incident to his situation as serjeant, and during that time had taken a tenement there of the value of 10*l.* a-year or more, in which he had resided with his family for more than forty days. Upon appeal, the Court of quarter sessions confirmed the order of removal, subject to the opinion of the Court of K. B., whether by such renting and residence the said *William Lancaster* had gained a settlement in *Brighthelmstone* or not. — After argument, Ld. *Ellenborough* C. J. In this case, it seems to me, that the sessions have drawn the right conclusion. It is contended that the party here had no intention of coming to settle at *Brighthelmstone*; that is not correct; certainly he had the intention of settling there, subject, however, to the power of those who directed his movements. The case states that he himself took the tenements as a lodging for himself and his family. Now suppose an action then to have been brought against him for non-payment of rent, he clearly could not set up as a defence, that he was not the tenant of the premises; then if he, as a tenant, occupied this house of the yearly value of 10*l.* and upwards, he was during his occupation irremovable, and that having continued for forty days, he has gained a settlement. But it is said the mutiny act prevents a soldier from gaining a settlement; that act, however, contains no such express provision: the clause enabling every soldier to be examined as to his settlement, does not disqualify him from obtaining a new one. The case of hiring and service is quite distinguishable from this; that proceeds on a ground of a person's not being permitted to contract two relations inconsistent with each other. In order to gain a settlement by hiring and service, he must engage to serve at all events for a year; now a soldier has not the capacity to render such service, for an order from the war office may at any time, intervene, and take him from his master's controul. The case of taking a tenement is quite different, he does not there engage to reside in it for any definite period, and if he does actually reside for forty days it is sufficient. If not, it would equally follow, that supposing an estate to have devolved upon him by act of law, or that he had made a purchase to the amount of 30*l.*, still no settlement would be gained by him. Order of sessions confirmed.

(6.) Residence; as to time and place.

Forty days residence i necessary.

Less than forty days' residence upon a tenement of 10*l.* a-year will not gain a settlement. As in

Rex v. *Dilwyn*, *T.* 8 & 9 *Geo.* 2. *Burr. S. C.* 54. 2 *Nol. P. L.* 62. *William Smith*, the pauper, agreed for a farm in the parish of *Eardisland*, to hold from *Candlemas*, at 44*l.* yearly rent; and in *April* following he sowed about fifteen acres of the land with grain; and in *May* following he came to live on the farm, and inhabited there about three weeks; and then the greatest part of his stock of cattle was seized and driven away, for rent due to his former landlord at *Leominster*. Whereupon the said *Smith* then came to a new agreement with his landlord in *Ear-*

Residence interrupted by force.

R. v. Dilwyn.

disland, and agreed to quit that farm, and to continue in the farm-house and garden, and to have a small parcel of pasture with it, at the rent of 3*l.* 10*s.*, and he continued thereupon in the said parish of *Eardisland* till *Michaelmas* following. — By Ld. *Hardwicke* C. J. There was no inhabitancy for forty days in *Eardisland* under the lease of 44*l.* a-year; and therefore there can be no settlement gained under it. And the next agreement with his landlord in *Eardisland* was quite a separate contract, and cannot be tacked to the former. It did not take effect till the other was finished.

If a person be forcibly removed from his tenement, within forty days, it prevents his settlement.

Rex v. *Llanbedergoch*, *H.* 37 *Geo.* 3. 7 *T. R.* 105. 2 *Bott*, 152. 2 *Nol. P. L.* 62. Two justices removed the pauper and his family from *Llanbedergoch* to *Pentraeth* both in *Anglesea;* the sessions quashed the order, and stated the following Case: The pauper rented a tenement in the parish of *Lleckylehod* called *Peurhyw*, of one *Griffith* for the year 1795. In *May*, 1795, he received notice to quit at *All Saints* following. The pauper said he had no place to go to, and if he was compelled to quit, he would take down a barn he had built upon the farm. *Griffith* then said, suppose we exchange, you shall go to *Weyû Emâd*, a tenement in *Llanbedergoch* that *Griffith* farmed of one *Pritchard* at the rent of 10*l.* 10*s.* a-year, to which the pauper agreed, and promised not to take down the barn. It was then agreed between them, that they were not to mention the matter, lest the respondents should hear of it, and prevent the pauper getting into possession of the farm at *Weyû Emâd*. On the 16th *November*, 1795, he removed to *Weyû Emâd*, but did not remove his furniture there, lest the respondents should see him, he having been informed if he got into possession and slept in the house one night, he could not be turned out. The pauper resided twenty-nine days on the premises, when *Pritchard*, aided by some of the parishioners and overseers of the poor of *Llanbedergoch forcibly* removed him and his family from *Weyû Emâd*, and thereby prevented him residing there forty days, and he has ever since been forcibly kept out of the premises. The pauper's prior settlement was in *Pentraeth*. The pauper did no other act to gain a settlement in *Llanbedergoch*. — It was argued in support of the order of sessions, that if the pauper had resided forty days in *Llanbedergoch* he would have gained a settlement, and as he was prevented by the parish officers of *Llanbedergoch*, from residing there by force, he ought to have the benefit of that settlement, otherwise they would be taking advantage of their own wrong. If the pauper had by fraud obtained possession of a house and kept it for forty days, the circumstance of fraud would have prevented his gaining a settlement, and if so, the fraud used by the parish officers ought not to defeat the settlement. — Ld. *Kenyon* C. J. In order to gain a settlement by living upon a tenement of 10*l.* a-year, it is absolutely necessary that the party should reside there for forty days; with regard to the fraud; where a case is pregnant with circumstances of fraud, the Court have repeatedly said they cannot infer fraud; that fraud is a fact to be expressly stated. Order of sessions quashed. See *R.* v. *Fillongley*, p. 605.

If a person be arrested and carried to prison in a parish dif-

Rex v. *St. George the Martyr, Southwark*, *H.* 38 *Geo.* 3. 7 *T. R.* 466. 2 *Bott*, 154. 2 *Nol. P. L.* 62. The sessions quashed an order for the removal of *Mary Lord*, the wife of

R. v. St. George the Martyr.

ferent from that in which his tenement is, before he has completed a residence of forty days, he gains no settlement though his family reside for seven weeks.

J. Lord, and her two children, from *St. George the Martyr* to *St. Martin in the Fields, Westminster*, and stated the following Case: — *J. Lord*, not being settled in either of the contending parishes, took the first floor of a house in *St. Martin*'s parish, at 15*l. per annum*, the rent to be paid quarterly; he went into possession on the 17th *March*, and on 22d *March* he was arrested and carried to the *Marshalsea* prison in *St. George*'s parish, but his family continued to reside in the house in *St. Martin*'s parish until the 6th of *May* following, being seven weeks, the husband remaining all the time in the *Marshalsea* prison, when his wife and children went to him there, and he gave up possession of the house in *St. Martin*'s, and the landlord took part of his furniture for seven weeks' rent.— The question reserved for the opinion of the Court was, whether the husband, *J. Lord*, gained a settlement in the parish of *St. Martin*'s under the above circumstances. — Ld. *Kenyon* C. J. said, That no settlement could be gained by a residence on a tenement for a shorter period than forty days; and though in the case of *Rex* v. *Leeds* (*post*, § XI. 3.) it was only decided that the justices ought not to have removed the pauper from *Blackfordly* during the continuance of his lease, the Court added that "if his lease at *Blackfordly* had been at an end, his last forty days' residence at *Leeds* might have borne a different consideration;" evidently intimating an opinion that forty days' residence is necessary to give a settlement. Order of sessions confirmed.

Residence for thirty-three days by a widow on a tenement of 20*l.* a-year, cannot be coupled with a residence on the same tenement with her husband for sixteen days preceding, so as to gain her a settlement.

Rex v. *South Lynn*, *T.* 34 *Geo.* 3. 5 *T. R.* 664. 2 *Bott*, 150. 2 *Nol. P. L.* 63. Two justices removed the four infant children of *Ann Howard*, widow, from *South Lynn* to *East Bilney*, both in *Norfolk*. The sessions quashed the order, subject to the opinion of this Court on the following Case: *C. Howard*, the father of the paupers, was settled in *East Bilney* prior to 24th *October*, 1792; on 23d *October*, 1792, the said *C. Howard* being then and some time before in possession of a cottage and land in *Wiggenhall, St. Peter's*, in *Norfolk*, at the yearly rent of 2*l.* 12*s.* 6*d.* hired a house in *South Lynn* at the yearly rent of 9*l.* and paid 10*s.* 6*d.* in part of the rent, and on the following day he and his wife, and their said four children, entered into possession, and resided thereon till his death on the 8th *November*, 1792, still keeping possession of the cottage and land in *Wiggenhall*. *C. Howard* died intestate, and no letters of administration have been granted to his widow, or any other person, but she kept possession of and occupied the house and cottage in *South Lynn* and *Wiggenhall*, but she and her children resided in *South Lynn* until 11th *December*, 1792, and on her quitting the house at *South Lynn*, she paid the landlord 12*s.* which, with the money paid him before by her husband, was for half a quarter's rent. After this she remained in possession of the cottage in *Wiggenhall*. — By Ld. *Kenyon* C. J. If we were to decide on the express words of the act of parliament, we should overturn ninety-nine cases out of an hundred that have been determined on this statute. If a mere residence on a tenement for forty days irremoveable, were sufficient to give a settlement, every lodger and every servant residing for that length of time would then acquire a settlement; but *in order to gain a settlement by residing on a tenement of the yearly value of* 10*l. the party must stand in the relation of tenant to the pro-*

perty for forty days. Here there was an inchoate right in the husband, and afterwards in the widow, which, if completed by a full residence of forty days, in either case would have been sufficient; but that one necessary act, residence of forty days by the same tenant to the property, was wanting. The husband, after residing sixteen days on this estate, died, and then the wife resided on it; but what privity was there between the husband and wife as to this property? It appears that she did not take out letters of administration, so as to give her a settlement by residing on her own for forty days, nor did she reside on the estate for that time as tenant of the premises; and indeed she was not solely entitled to administration. The case of *Rex* v. *Netherseal* (*ante*, p. 591.) is different from the present, because there the estate was bequeathed to the widow, whose second husband lived forty days upon it; but here there was no privity of contract or of interest whatever between the pauper and her late husband, and we cannot connect the residence of the husband as tenant, with the residence of the widow as tenant, so as to complete the forty days' residence by both. Though this case is new in specie, it is not new in principle; and upon the principles established in former cases, I am of opinion, that the widow did not acquire any settlement in *South Lynn*. The other judges concurred. Order of sessions quashed. R. v. South Lynn.

Taking land in the parish, of whatever value it shall be, without coming to reside there, will not gain a settlement.

St. Margaret's, Westminster, v. *Ludgate, H.* 5 *Geo.* 2. 2 *Barnard,* 76. 2 *Bott,* 93. 2 *Nol. P. L.* 62. 150. Two justices removed *Elizabeth Conyers* from the parish of *St. Margaret's* to the parish of *Ludgate.* The sessions state the case specially: That *James Conyers,* father of the said *Elizabeth,* rented a house in *Ludgate* parish of 25*l.* a-year, and paid to the rates of the church and poor; but that he was a prisoner in the *Fleet* at the time he did so; and that *Elizabeth* gained no settlement for herself. Upon which the sessions adjudged that he gained no settlement by this. But the Court quashed the order of sessions, and confirmed the order of the two justices. For in this case he was in custody of the law, and in no capacity of gaining a settlement elsewhere; though occasionally absent, yet he might be looked upon as virtually resident at *Ludgate,* which was the place where he *came to settle.* But see stat. 23 *G.* 3. *c.* 23. § 1. *ante,* p. 539. and 54 *G.* 3. *c.* 170. § 4. Addenda to this Vol.

What shall be deemed a sufficient residence so as to gain a settlement. Where the tenant is in the rules of the *Fleet,* and he has in the same parish a tenement he rents, he paying the rent, he gains a settlement.

Rex v. *Topcroft, M.* 25 *Geo.* 3. *Cald.* 478. 2 *Bott,* 149. 2 *Nol. P. L.* 61. The pauper rented a farm in *Kempnell* at 30*l.* a-year, and resided on it from *Lady-day,* 1779, till *Christmas,* 1781, when he went with his wife to reside with his son-in-law at *Topcroft,* taking with him all his furniture and the stock remaining on his farm at *Kempnell;* he resided with his son-in-law at *Topcroft* upwards of forty days before he delivered up the possession of the farm in *Kempnell,* but he did not hire or occupy any land or tenement whatever in *Topcroft.* — The sessions confirmed the order by which he was removed to *Topcroft.* — *Bearcroft* shewed cause and said, The principle of the poor laws was, that no person could be removed but those which were likely to become chargeable; renting 10*l.* a-year was made the test of ability, and the pauper having done so, and continuing forty days in

The residence must be in the parish where the tenement or some part of it lies.

Residence: the pauper occupying tenements in different parishes.

R. v. Topcroft.

Topcroft, gained a settlement. — *Wilson, contra:* The right to a settlement from 10*l.* a-year arises not from renting it, but from coming to reside upon it; here, on the contrary, the pauper runs away from it; and he cited the case of *Rex* v. *Llanverras*, *ante*, p. 588. to shew that the residence must be in the parish where the tenement or some part of it lies; and of this opinion was the Court; and Ld. *Mansfield* C. J. said, Even if residence in one parish and occupation in another were sufficient, here is no such occupation, for he had run away, and left his tenement. Both orders quashed.

Same point.

Rex v. *Knighton*, *T.* 27 *Geo.* 3. 2 *T.R.* 48. 2 *Bott*, 150. 2 *Nol. P. L.* 61. *Robert Hardy* and his three children were removed from *Knighton* to *St. Margaret*. The sessions quashed the order, and stated the following Case: — The pauper being settled in *St. Margaret*, took a windmill in that parish of ten guineas a-year, at *Lady-day*, 1778, and occupied it for one year. On 30th of *April* following he married *Anne* the daughter of *Samuel Ward*, of *Knighton*, which is a township in the parish of *St. Margaret*, but distinct as to the maintenance of the poor. Before the marriage, *Ward* said he would give him house-room till he could provide himself; and on his marriage, he went accordingly to reside with his father-in-law at *Knighton*, whose house was about a quarter of a mile distant from the said mill; and he continued there until the death of *Ward* in 1786. During the time he occupied the said mill, or afterwards, he neither rented nor occupied any land in *Knighton*. During the last half year he rented the said mill, he kept a servant, who resided with him in *Ward's* house as part of his (the pauper's) family. The pauper believed it was known to the township of *Knighton* that he rented the mill, because he served some of the inhabitants there with grist, and they knew him to be a miller. — *Ashhurst* J. delivered the opinion of the Court (after taking time to consider): The question in this case is, whether the pauper gained a settlement in the parish where he rented a tenement of the yearly value of 10*l.* or in the parish where he resided, occupying at the same time a tenement in another parish? And we are all of opinion that he did not gain a settlement in *Knighton*, because, *in order to gain a settlement by renting* 10*l.* per annum, *there must be a residence either on the premises, or at least in the parish where some part of the premises lies.* *Rex* v. *Topcroft* is decisive of the question; and there are two or three other cases, *Rex* v. *Butley*, *Burr. S. C.* 107, (*ante* p. 588.), which confirm this doctrine, where it has been taken for granted that there must be a residence. Order of sessions quashed.

A person renting a tenement in one parish, and residing rent-free in a tenement in another, gains a settlement where he resides.

Rex v. *Fritwell*, *E.* 37 *Geo.* 3. 7 *T. R.* 197. 2 *Bott*, 153. 2 *Nol. P.L.* 40. 42. 61. *Robert Hearne* and his family were removed from *Stoke Lyne* to *Fritwell*. The sessions confirmed the order, and stated the following Case: — *Thomas Hearne*, the pauper's father, about twenty-two years since rented two farms in *Stoke Lyne*, one at 35*l.* and the other at 10*l.* a-year; during the last four months that he occupied the above farms, he and his family dwelt in the adjoining parish of *Fritwell*, in part of a house belonging to a relation, who permitted him to live in it rent-free: the house consisted of two separate tenements one of which the pauper and his family occupid, together with a barn

stable, and yard appurtenant. He kept a team there, and drew his corn from his farm at *Stoke Lyne* to *Fritwell*. In this separate tenement he continued nearly two years, but never occupied any land in *Fritwell*. This separate tenement and use of the barn, stable, and yard, were of the yearly value of about 35*s*. He never paid any rent in respect thereof, but his relation had all the dung and manure made by the pauper's cattle, and spread it upon his own lands in an adjoining parish.—Ld. *Kenyon* C. J. It is now too late to enquire into the propriety of all the decisions that have been made on the settlement laws since the passing of 13 & 14 *C.* 2.; for even though it should appear on such enquiry (which I do not suggest is the case,) that the words of that statute have been in some instances strained, yet as there is a series of decided cases on the subject, we ought not now to depart from them; if when the question first arose it had been holden, that the party must have one single tenement in the parish of 10*l*. a-year, perhaps such construction of the act would have fallen in with the general opinion of mankind: however it was not long ago decided, that it need not be one undivided tenement held under one landlord, nor all lying in one parish, for that distinct tenements held under different landlords, and lying in different parishes, may be joined together, and provided they all together amount to the annual value of 10*l*. they will confer a settlement on the party: and that being once decided, I think it puts an end to this question. Here the pauper's father, who rented two tenements in *Stoke Lyne*, went to the parish of *Fritwell*, where he entered into part of a house forming a distinct tenement by itself, and belonging to his relation, where he was permitted to live, but not, as has been argued, out of charity. This is not like one of the cases cited, where the pauper was taken into the house of his son-in-law as a lodger; for here were two separate tenements, the whole of one of which he occupied, and I am not prepared to say that his relation could have turned him out of possession on a day's notice; and though it is stated in the case that the pauper paid no rent in money, it appears that there was an equivalent; there was a *quid pro quo;* the pauper brought all his dung and manure from his other tenements, and this relation had the benefit of it. As therefore he was in the occupation of more than 10*l*. a-year in the whole, and some part of it lay in the parish of *Fritwell*, I am of opinion that this case was properly decided, as well by the justices who removed the pauper, as by those who confirmed the order on hearing the appeal. The other judges were of the same opinion. Both orders confirmed. (See *Rex* v. *Fillongley*, *ante*, p. 581.)

Residence: the pauper occupying tenements in different parishes.

R. v. Fritwell.

See stat. 59 G. 3. c. 50. *ante*, p. 531, 540.

Rex v. *St. Mary, Lambeth*, *E.* 39 *Geo.* 3. 8 *T. R.* 240, 241. 2 *Bott*, 155. 2 *Nol. P. L.* 63. *John Taylor* was removed from the parish of *St. Olave* to the parish of *St. Mary, Lambeth*, both in *Surrey*. The sessions confirmed the order, and stated the following Case:—The pauper, about four years ago, took a tenement at the yearly rent of twelve guineas, in *St. Mary, Lambeth*, and continued tenant thereof until 29th *September*, 1797. He resided in that tenement with his wife and family from the time of taking it until 24th *June*, 1797, when he took a lodging for the convenience of his business, at the rent of 8*l*. 10*s*. a-year, in the parish of *St. Mary-le-Bone*, where he occasionally slept,

Where a residence is in different parishes, and in one of them for forty days at different intervals, and the pauper sleeps there the last night, the settlement is gained there.

R. v. St. Mary, Lambeth.

leaving his wife and family at the house in *Lambeth:* both tenancies expired on 29th *September*, 1797. The pauper slept sometimes in *Lambeth* parish, and sometimes at his lodgings in *St. Mary-le-Bone,* and for above forty days in the whole upon the tenement in *St. Mary-le-Bone,* and he slept there the last thirty nights of that tenancy. His wife and family never accompanied him or slept at the lodging in *St. Mary-le-Bone,* but remained at the house in *Lambeth* until about three weeks previous to *Michaelmas* day, 1797, when she went away and took the furniture away with her. — The sessions were of opinion, that the pauper's settlement was in *St. Mary, Lambeth.* — The Court said, there could be no doubt but that the pauper's settlement was in the parish of *St. Mary-le-Bone,* where he had a tenement of above the annual value of 10*l.* when joined to the other in *Lambeth,* and in which former tenement he had resided on the whole above forty days, and where he had slept the last night. The question was too plain for argument. Both orders quashed.

The same point was determined in *Rex* v. *Lowess, E.* 16 *Geo.* 3. 2 *Bott*, 148. *Burr. S. C.* 825.

In *Rex* v. *Ringwood,* (*ante*, p. 574.) Ld. *Ellenborough* C. J. said, The Court will not enter into minute enquiries whether the pauper *slept* in the literal sense of the word, during the last night of his residence, — what will satisfy *pernoctavit* is sufficient.

59 G. 3. c. 50.

By stat. 59 *Geo.* 3. *c.* 50. No settlement shall be gained (after *July* 2. 1819,) "unless the house or building shall be held, and the land occupied for the term of one whole year by the person hiring the same."

A pauper does not gain a settlement by having hired a tenement of more than 10*l.* a-year value, and having resided therein more than forty days altogether, but less than forty days before the passing of stat. 59 G. 3. c. 50.

Rex v. *Inhab. of St. Mary-le-Bone, T.* 2 *Geo.* 4. 4 *B. & A.* 681. 2 *Nol. P.L.* 65. Removal from *St. Mary-le-Bone* in *Middlesex,* to *St. Pancras,* in the same county. The sessions, on appeal, discharged the order, subject, &c. Case: — The pauper hired an unfurnished shop in the parish of *St. Pancras,* of the yearly value of 10*l.* and upwards, and lived therein eight months. He afterwards hired an unfurnished shop and parlour, part of a house in the parish of *St. Mary-le-Bone,* at the rent of 26*l.* a-year, which he took possession of on the 25th *May,* 1819, and resided in and occupied the said last mentioned premises upwards of 40 days, but only 38 days of such residence and occupancy had elapsed on the 2d *July*, 1819, the day on which stat. 59 *Geo.* 3. *c.* 50. received the royal assent. The sessions were of opinion, that by this residence the pauper gained a settlement in *St. Mary-le-Bone,* and discharged the order. The case having been argued, *Cur. adv. vult.*, and afterwards the judgment of the Court was thus delivered by *Bayley* J. The question, in this case, turns entirely upon the construction of the stat. 59 *Geo.* 3. *c.* 50., which took effect from the 2d *July*, 1819. The pauper had on that day resided in and occupied, for a period of 38 days, part of a dwelling-house in *Mary-le-Bone* parish, at 26*l.* a-year; so that, if the statute had not been passed, he would undoubtedly have acquired a settlement in *Mary-le-Bone* by his subsequent residence and occupation, which, in the whole, considerably exceeded forty days. But he had not, on the 2d of *July*, acquired such settlement. It was contended, that the statute being wholly expressed in the future tense did not apply to such a case, but must be considered as wholly and absolutely prospective, and confined to tenements

hired after the day on which the statute took effect. If this be the true construction, then a residence of one day prior to the statute, connected with a continued residence in pursuance of the original hiring for 39 days after the statute, will confer a settlement. The statute, however, had in view, as appears by the preamble, the preventing of the disputes and controversies which had arisen respecting the settlement of poor people by the renting of tenements. And we think this object will be best attained by giving to the words of the enacting part their full and absolute effect, and by considering the statute as applicable to every case within its scope, wherein a previous settlement had not been completely gained and established before the statute was passed. A contrary construction might open the door to many disputes and controversies as to the nature and effect of inchoate titles. Whereas, according to the construction which we adopt, the only enquiry hereafter will be, whether a settlement had been acquired *before* the 2d *July*, and the case will be considered as if the pauper had died or removed from the tenement on the 1st day of that month, and as if he had resided *on*, but not *after* that 1st day of *July*. Order of sessions quashed, and original order confirmed. R. v. St. Mary-le-Bone.

See stat. 59 *Geo.* 3. *c.* 12. § 11. *ante*, p. 269.

(7.) Of the time for which the Contract is made.

It is observable, that the statute doth not say for what *time* he shall rent the tenement, but only of what value it shall be by the year. And in the case of *Rex* v. *Shenstone*, *E.* 32 *Geo.* 2. *Burr. S. C.* 474. 2 *Bott*, 141. 2 *Nol. P. L.* 48. A person took a house of 30*s.* a-year, in the parish of *Gratwich*; and two and a-half acres of land in the parish of *King's Bromley*, for the growing of potatoes, from *Candlemas* to *Michaelmas*, being eight months, for 11*l.*; and lodged the last forty days before *Michaelmas* in the parish of *King's Bromley*. It appeared that he took them *bonâ fide*, and without any design of fraudulently obtaining a settlement in the parish; and it was adjudged that he gained a settlement thereby in the said parish of *King's Bromley*. Taking a tenement for eight months, will gain a settlement, there being also a forty days' residence.

Staunton under Bardon v. *Ulescroft*, *H.* 6 *Geo.* 3. *Burr. S. C.* 558. 2 *Bott*, 142. 2 *Nol. P. L.* 48. The pauper, *William Harrison*, took a tenement from 1st *June* till *Lady-day* following, for twenty-six guineas, which he occupied accordingly, and paid the rent. The question was, whether by continuing upon this tenement for forty days unremovable, he thereby gained a settlement? — And by the Court, clearly, he did. Same point.

St. Matthew's, Bethnal Green, v. *St. Botolph's, Aldgate*, *H.* 7 *Geo.* 3. *Burr. S. C.* 574. 2 *Bott*, 135. 2 *Nol. P.L.* 48. *John Fell*, the husband of the pauper, hired a house for five months, for which he agreed to pay 4*l.* He came and resided with his family there, during the said five months. And the house, at the time of hiring and entering upon the same, was worth, to be let, 10*l.* by the year. It was argued, that this could not gain a settlement. The criterion, which is the ability of a person to hire a tenement of 10*l.* a-year value, fails in this case. For it doth not appear that this man had such a degree of credit as the statute requires. Besides that the proportion of 4*l.* for five Same point. Taking for five months.

St. Matthews v. St. Botolph's.

months falls short of 10*l.* a-year, by about 8*d.* a-month.—But by Ld. *Mansfield* C. J. and the Court: The rent is not material, but the value. And we are concluded from treating this tenement as under 10*l.* a-year, by the finding of the justices, who have stated it as a fact, that at the time when he took it, it was of the value of 10*l.* a-year to be let. And it was adjudged that he thereby gained a settlement.

Removal under an order will not put an end to a contract for renting: and a pauper returning after execution of an order of removal, to his tenement under such contract, may gain a settlement thereby.

Rex v. *Fillongley*, *M.* 29 *Geo.* 3. 2 *T. R.* 709. 2 *Bott*, 693. 2 *Nol. P.L.* 142. 147. 254. Removal from *Fillongley* to *Kinwalsey*; and quashed by the sessions. The pauper on 1st *January*, 1786, and for some years before, rented and resided on a tenement in the parish of *Fillongley*, of the yearly value of 10*l.* He continued thereon till the 29th *April*, in the same year, when he was removed by an order of removal from *F.* to *Kinwalsey*; on the same day on which he was delivered with the said order of removal, he returned back to the tenement in *F.*, where he resided without making any new contract with his landlord for the same, and without any interruption for about three quarters of a year, and then was removed to *Kinwalsey*. An appeal was entered against the said order of the 29th *April*, 1786, but was not prosecuted. The question was, whether as the pauper entered into no new contract on his return, he could be considered as, "coming to settle on a tenement of 10*l.* *per annum* within the statute? and, whether the former contract were done away by the order of removal?" And it was urged against the order of sessions, that by the case of *Rex* v. *St. Michael's Bath*, (*Cald.* 110.) there must be a privity of contract, and that mere possession will not suffice. That the pauper's return was a wrongful act, and that therefore by the case of *Rex* v. *Kenilworth*, (2 *T. R.* 598.) no settlement could be gained. But it was held clearly by the Court, that an order of removal could not put an end to a contract between the parties, respecting the taking a tenement; that therefore the pauper could not be considered as returning in a state of vagrancy, and that the old contract remained, and therefore he gained a settlement by a residence of forty days. That in the case in *Cald.* the pauper resided against the consent of the landlord. Order of sessions discharged.

59 G. 3. c. 50.

By stat. 59 *Geo.* 3. *c.* 50. No settlement shall be gained (after *July* 2d, 1819,) "unless the tenement shall have been *bonâ fide* hired for the term of one whole year."

(8.) Of Fraud.

Taking land without stocking it, deemed fraudulent.

Fraud will defeat this species of settlement, as it will all others.

Rex v. *Woodland*, *E.* 26 *Geo.* 3. 1 *T. R.* 261. 2 *Bott*, 139. 2 *Nol. P. L.* 54. It appeared by the case stated, that the pauper being settled in *Woodland* went to *Ashburton*, where he rented a cot-house at 1*l.* 12*s.* *per annum*, in which he resided; during which time he took a meadow in *Woodland*, *at the rent of ten guineas*, of one *M. N.*, who resided in the same parish. The pauper did not stock it at all, but at *Christmas* he *let the grass* for 3*l.* 3*s.* to *Edward Barter*, till *Lady-day* following, who stocked it, and paid the rent to him. Several persons offered to take the grass of the pauper before he let it to *Barter*. He (the pauper)

laid up the ground for mowing, and then let the mow to the said *M.N.* for five guineas, and the after-grass for two guineas. At the end of the year, when the pauper settled accounts with *N.*, he received two guineas on balance of accounts, after allowing five guineas to *N.* for the half year's rent then due; *N.* had frequently made a practice to take ground and let it again in parcels, (it was the case now;) three years before this transaction, the pauper had received relief from *Woodland*, and half a year after the expiration of the term, his wife received relief from *Woodland*. The sessions were of opinion, that the said taking was fraudulent. And the main question made in argument was, whether the Court of K. B. would bind themselves by the finding of the sessions, that it was a fraudulent transaction? And in support of the negative were cited *Rex* v. *St. Nicholas, Harwich, Burr. S. C.* 171. And *contra, Rex* v. *Tedford, Burr. S. C.* 60. 2 *Bott*, 505. — But the Court said they were of opinion that it was a fraudulent taking, and that they would give no opinion upon the right of the Court to examine into the propriety of such conclusion by the sessions. *Fraud.* R. v. Woodland.

In *Rex* v. *Fillongley, M.* 29 *Geo.* 3. 2 *T.R.* 709. 2 *Bott*, 693. 2 *Nol. P. L.* 461. 3*d edit.* which was a question arising upon a settlement by taking a tenement; Ld. *Kenyon* C. J. said, There is no rule better established than that fraud is never to be presumed, and I believe in a case sent for the opinion of this Court, which was pregnant with fraud, they would not presume fraud because it was not so stated. See *Rex* v. *Llanbedergoch, ante*, p. 597. The Court will not presume fraud.

§ XI. Settlement by a Person's own Estate.

Stat. 9 *Geo.* 1. *c.* 7. § 5. Enacts that after 25th *March*, 1723. *No person or persons shall be deemed, adjudged, or taken to acquire or gain any settlement in any parish or place, for or by virtue of any purchase of any estate or interest in such parish or place, whereof the consideration for such purchase doth not amount to the sum of thirty pounds,* bonâ fide *paid, for any longer or further time, than such person or persons shall inhabit in such estate, and shall then be liable to be removed to such parish or place, where such person or persons were last legally settled, before the said purchase and inhabitancy therein.* 9 G. 1. c. 7. Purchases under 30*l.* not to entitle to settlements in a parish.

1. *As to the having an estate of his own.*
2. *As to estates acquired by purchase.*
3. *That a person may not be removed from his own, although not settled thereby.*
4. *Of certificate persons, as affected by this act.*
5. *Of residence.*

1. *As to the having an estate of his own;* and herein.
   (*a*) *Of the value requisite.*
   (*b*) *Of infants, executors, administrators, next of kin, tenants at will, and tenants by quarantine.*
   (*c*) *Of joint-tenants, trusts, estates vested in the husband by marriage, guardian in socage, &c.*
   (*d*) *Of estates gained wrongfully: or by imperfect contracts.*
   (*e*) *Of profits not partaking of the realty.*
   (*f*) *Of mortgages.*

1. (*a*) Of the value of the Estate.

The estate need not be of 10*l.* per ann., if it be for life, or of inheritance, and it may be copyhold.

Harrow v. *Edgeware*, *E.* 11 *Ann.* *Fol.* 257. 2 *Bott*, 457. 2 *Nol. P. L.* 71. A person settled at *Harrow*, went into the parish of *Edgeware*, and purchased a copyhold estate for life, and lived therein four or five years, and died. And as this was a tenement under 10*l.* a-year, the question was upon the 13 & 14 *C.* 2., Whether this gained him a settlement at *Edgeware?* It was argued that the statute hath been always held to mean an estate which a man takes to farm, and not an estate of his own; for if a person has a freehold, he cannot be removed from it, though not worth 10*l.* a-year. — And by *Parker* C. J. and the Court: Where a person has an estate for life, or an estate of inheritance of his own, that gains him a settlement, though less than 10*l.* a-year; for he cannot be removed, and if he cannot be removed, he certainly gains a settlement.

See *Rex* v. *West Shefford*, *post*, § XI. 5.

(*b*) Of Infants, Executors, Administrators, next of Kin, Tenants at Will, and Quarantine.

An infant eight years of age residing in the parish in which it has an estate of its own, is irremovable, and may gain a settlement by such residence.

Rex v. *Hasfield*, *E.* 13 *Geo.* 2. 2 *Stra.* 1131. *Burr. S. C.* 147. 2 *Bott*, 462. 2 *Nol. P. L.* 62. 89. 134. On a special order of sessions, relating to the settlement of a boy of eight years and a girl of six, it was stated that the mother of these children had an estate of 4*l.* a-year in *Tirley*, where she and her husband lived and had these children. That she dying, the husband became tenant by the curtesy; and whilst such, he took 30*l.* a-year at *Hasfield*, and lived one year there with his two children, and then died: That the children being found with their grandmother at *Tirley*, were both removed to *Hasfield;* which order the sessions confirmed. — And now the Court, after argument, confirmed the orders as to the girl, but quashed them as to the boy. For as to the boy, he was tenant in fee of the 4*l.* a-year. And though it was not stated, that he was actually upon that spot, yet it was enough that he had such an estate in the parish, from which he could not be removed. But as to the daughter, it is otherwise; she could demand no maintenance out of her brother's estate; as it was never yet determined, that children should go to a grandmother for nurture. She may indeed be charged to contribute to their relief in the parish where they are settled.

See *Rex* v. *Houghton-le-Spring*, *post*, § XI. 5.

An executor shall gain a settlement by residence as such, upon leasehold.

Rex v. *Sundrish*, *T.* 7 *Geo.* 2. 1 *Sess. Ca.* 200. 2 *Stra.* 983. *Burr. S. C.* 7. 2 *Bott*, 460. 2 *Nol. P. L.* 2. 78. *Thomas Perch*, by indenture, demised to *Thomas Gates*, the father, a cottage at 5*s.* a-year, which was the full value, for 99 years. The lessee held it till his death, and devised it to *Thomas Gates* his son. And the question was, whether the son as executor, being entitled to the term, shall gain a settlement by inhabiting in such cottage? — By the Court: Where a man lives upon his own, is a case of a very tender nature, and the law will not unsettle him: Persons to be removed under the statute of *C.* 2. are those that wander from

place to place, and not those that live upon their own estate. And adjudged that he gained a settlement.

South Sydenham v. *Lamerton*, *E.* 3 *Geo.* 1. *Sett. & Rem.* 103. 1 *Stra.* 57. 2 *Bott*, 462. *n.* (*a*) 2 *Nol. P. L.* 95. A person possessed of a lease for years dies intestate; if the next of kin shall be said in law to be settled there, was the question: It was held not: for he had only a right, which he must pursue by taking out letters of administration, and no right is vested in him till that is done.

No right is vested until letters of administration are taken out.

Rex v. *Widworthy*, *T.* 10 *Geo.* 2. *Andr.* 4. *Burr. S. C.* 109. 2 *Bott*, 461. 2 *Nol. P. L.* 72. 95, 96. The pauper being settled at *Farringdon*, removed to *Widworthy*, and lived there with his father in a cottage house of 30*s.* a-year, working as day-labourer. The father died intestate, possessed of the said cottage for the residue of a term, determinable on lives, leaving the pauper and another son. The pauper's brother took his distributive share of his father's estate in goods, and the pauper himself, after the father's death, continued in the cottage for five or six years, until the lease was determined: After which, and since the making out the order for his removal, he took out administration to his father. And the sessions quashed the said order, adjudging him to be settled at *Widworthy.*—By the Court: At the time of making the first order he had gained no settlement at *Widworthy;* because nothing vested in him before administration was granted to him. If so, then that order for removing him was a good order when made. And the sessions ought not to have quashed it; though administration had been afterwards taken out. For they could not quash a good order upon a matter which happened *ex post facto.* If this administration really gained him a settlement, there ought to have been a new order of two justices to remove him again to *Widworthy.* But taking out administration after the term was expired, could never give him an interest in the expired term. And whilst the term subsisted, not having taken out administration, he was in possession merely as a tenant at will. He was removable by the parish; and his right would have been without foundation if administration had been granted to any one else.

Where there are two next of kin in equal degree, and the father being possessed of the residue of a term, dies intestate, and after order of removal made for one, he takes out letters of administration, he cannot have a settlement by virtue thereof.

Tenant at will can gain no settlement as such.

Rex v. *North Curry*, *M.* 22 *Geo.* 3. *Cald.* 137. 2 *Bott*, 477. 2 *Nol. P. L.* 96. *Betty Winter*, widow, and her four children, were removed from *North Curry* to *Ruishton*. The sessions quashed the order, and stated specially: That *John Winter*, late husband of the pauper, was before marriage settled at *Ruishton:* that soon after their marriage he purchased a cottage and garden in *North Curry*, of the yearly value of 20*s.* for 14 guineas, which was demised to him, his executors, administrators, and assigns, for ninety-nine years, or three lives, at the yearly rent of 2*s.* That he and his wife resided in the said cottage for several years until his death: *Betty* his widow, and their said children, soon after became chargeable to *North Curry*, but were refused relief unless they would go into the workhouse, which they did, and quitted possession of the said cottage and garden, where they were relieved until they were removed to *Ruishton* in *February*, 1781. *Ruishton* appealed at the *Easter* sessions 24th *April*, 1781, which sessions was adjourned, and the said *Betty* soon after returned to the said cottage, and resided

Where a wife and two children survive the intestate, the wife cannot gain a settlement by letters of administration taken out after assignment by her of the intestate's term. Lease for lives.

R. v. North Curry.

there till 28th *April*, 1781, when she sold the said cottage and garden for six guineas for the residue of the term, and by indenture dated 28th *April*, 1781, assigned the said term. That on 11th *July*, 1781, being the day after the first day of the present sessions, the said *Betty* sued out letters of administration of her late husband's effects.—*Gould*, in support of the order of sessions, stated the question to be, Whether a person having a sole right to administration, could by residence of forty days acquire a settlement before administration actually taken out, and argued that they might: But being called upon by *Buller* J. to distinguish this case from the above case of *Rex* v. *Widworthy*, he endeavoured to shew that there was a difference between the sole next of kin, and where several persons in equal degree have an *equal right;* here, the widow having before administration a specific right in the thing, could not be removable; that there was only a ceremony necessary to make the assignment by her indefeasible; that in the case of *Widworthy* the pauper was not *solely* entitled to administration, but jointly with his brother.—Ld. *Mansfield* C. J. said, that this case did not materially differ from the case of *Widworthy;* as the children were entitled to two-thirds of the effects, the widow is not properly, and in the sense of the cases, the sole next of kin. Order of sessions quashed.

The husband of an administratrix entitled to the trust of a term only gains a settlement by residence thereon for forty days.

Mursley v. *Grandborough*, 4 *Geo*. 1. 1 *Stra*. 97. 1 *Sess. Ca*. 122. 2 *Bott*, 459. 2 *Nol. P. L*. 2. 71. 80. 89. Sir *John Fortescue* demised a cottage of 20*s*. a-year to one *Eden* for ninety-nine years, reserving 12*d*. rent: *Eden* assigns the term to one *Gadden*, in trust for his wife for life, and then in trust for his son, during the remainder of the term: The wife dies. Afterwards the son dies, leaving a wife, who, as administratrix to her husband, becomes entitled to this term, and she grants this cottage for twenty-four years, excepting two rooms, (in which two rooms she lives,) and marries one *John Chappel*. The question was, Whether *Chappel*, as husband of an administratrix, who was entitled to the trust of a term only, and as being entitled to a chattel in another's right only, was removable by stat. 13 & 14 *C*. 2.?—And by the Court, he is not; this is not a taking of a tenement under 10*l*., for the 12*d*. is not reserved as a rent, but only an acknowledgment usually paid on long leases. The case of a copyhold is stronger than this, for that is but an estate at will. To strip the man of his own is the way to make him chargeable, for he may not be able to let it. Therefore the orders which adjudged this to be no settlement, were quashed.

Coming to a tenement by executorship although under 10*l*. a-year, gains a settlement.

Rex v. *Uttoxeter*, *T*. 5 *Geo*. 3. *Burr. S. C*. 538. 2 *Bott*, 469. 2 *Nol. P. L*. 2. 69. 71. 79. 107. The pauper, *William Gilbert*, was settled at *Uttoxeter*. His mother rented and resided upon a farm of 22*l*. a-year at *Marchington Woodlands;* which she devised to her five children, and made the pauper and her three other sons executors of her will, and died. The pauper alone proved the will and entered as her executor, and resided upon the farm twelve or thirteen weeks. He afterwards returned to *Uttoxeter;* but continued to go over to *Marchington Woodlands* to give directions from time to time, and had a servant upon the farm till the *Lady-day* following. The question was, Whether he hereby gained a settlement at *Marchington Woodlands?*—By the Court: It is very true, that a share not amounting to

10*l.* a-year, of a tenement of above 10*l.* a-year in value, will not do. But here he has a right as executor. The value thereof is totally immaterial; because, by common law, no person can be removed from his own. And one who has a right to reside irremoveably, doth thereby gain a settlement if he reside forty days.

Executors, Administrators, &c.

The executor to a tenant of an estate under 10l. a-year, gains a settlement by forty days' residence, although he do not prove the will.

Rex v. *Stone, E.* 35 *Geo.* 3. 6 *T. R.* 295. 2 *Bott*, 493. 2 *Nol. P. L.* 2, 3. 71. 79. 105. Two justices removed *E. Syms* from *Salt* and *Enson* to *Stone* in *Staffordshire*. The sessions confirmed the order, and stated the following Case: That the pauper was settled in *Stone*; that he went to live with his father-in-law, *E. Bentley*, in *Salt* and *Enson*, who rented from year to year a cottage and about six acres of land, under the yearly value of 10*l.* *Bentley* died, and by his will gave all his personal estate and effects to the pauper in trust, that he would allow the testator's wife a sufficient maintenance thereout during her life; and, at her decease, his personal estate and effects should be divided amongst his (the testator's) five children, the pauper's wife being one; and he appointed the pauper sole executor of his will. Upon the testator's decease, the pauper possessed himself of all his personal estate and effects, and continued in possession of the cottage and lands, without coming to any agreement with the landlord, buying and selling every thing, paying the rent, and maintaining the widow until his removal, which was upwards of three years; but he did not prove the will till three days previous to his removal.—Ld. *Kenyon* C. J. I cannot distinguish this case from *Mursley* v. *Grandborough*, and the other cases in which it has been held that an executor or devisee of a leasehold estate, of less value than 10*l.* a-year, gains a settlement by residing upon it for forty days. It is said, however, that this pauper was a mere trustee: but no one had a right to take the estate from him; he took it liable to all the testator's debts, and the creditors would have had a right to call on him for payment of their debts, before he made any distribution of the testator's property under the will. In fact, the pauper resided on this estate for more than forty days; and the established rule, which we ought to preserve with anxiety, is, that though a person cannot acquire a settlement, by a purchase, for less than 30*l.* paid, yet if he take such estate by devise, he may; so, though he cannot gain a settlement by renting a tenement of less value than 10*l.* a-year, yet if such an estate devolve on him by operation of law, he may gain a settlement by forty days' residence on it. The distinction taken between a tenant from year to year and a tenant for a term of years, is rather a distinction in words than in substance. A tenant from year to year is entitled to estovers, and the same advantages as a tenant for a term of years. In truth, he is a tenant from year to year as long as both parties please. And considering how many large estates are held by this tenure, it would be dangerous to say, that the term ceased at the end of the year, because then the landlord might lose his right of distress. Although on my first reading this case, it struck me as a very minute interest to confer a settlement: on consideration I am satisfied that we cannot, without overturning a variety of cases, determine that the pauper did not gain a settlement by re-

Next of kin

siding on it for forty days. The other judges gave their opinions to the same effect. Both orders quashed.

Sole next of kin, taking out letters of administration after the expiration of the forty days' residence.

Rex v. *Horsley*, *E.* 47 *Geo.* 3. 8 *East*, 405. *Bott*, *Cont*, 164. 2 *Nol. P. L.* 95. 97. 116. Removal from *Horsley* to *Avening*, and quashed by the sessions. The pauper *S. B.* was the widow of *J. B.* who died in 1801, legally settled in *Avening*. *W. P.* the father of *S. B.* died about *Christmas* 1802, intestate, possessed of a leasehold house in *Horsley* of 40*s.* *per annum*, for a term of years, leaving a widow, and the pauper his only child, whom he had by a former wife. *W. P.*'s widow died about a month after her husband. Upon the death of *W. P.* the pauper, his daughter, who had previously occupied the said leasehold house by permission of her father, continued to reside in it till the death of her mother-in-law, when she left the house, and let it to a tenant, who occupied it for three years from that time, and paid the rent for it to the pauper. The pauper, during this time, and until the date of the order of removal, resided with her family in *Horsley*. On the 11th of *January* 1806, the pauper obtained letters of administration to her father *W. P.*, and on the 29th of the same month, she sold and assigned her interest to *W. D.*, who ever after continued in possession. In support of the order of sessions it was contended, first, that the pauper, as *sole* next of kin of her intestate father (after the death of her mother-in-law), had such an equitable interest in the leasehold property, that by residing forty days in the same parish she gained a settlement. And for this they cited *Rex* v. *Cold Ashton*, (*post*,) and *Rex* v. *Offchurch*, (*post*, p. 615.) as to the distinction to be taken between the case of a *sole* next of kin, and those where others were entitled in an equal degree. And they said that the cases which had been determined against the settlement of the next of kin, were either where more than one were beneficially entitled under the statute of distributions, although one only were entitled to take out administration; or where administration was not taken out at all; or at least not taken out till after the interest in the premises expired in respect of which the settlement would accrue. And they cited *Rex* v. *Widworthy*, *South Sydenham* v. *Lamerton*, *Rex* v. *Lower Swell*, *Rex* v. *North Curry*, and *Rex* v. *Chew Magna*. And, secondly, it was argued, that the letters of administration, which were in fact taken out 18 days before the removal, and while the pauper's interest in the premises still subsisted, (which differed the case from *Rex* v. *Widworthy*), had relation back to the death of the intestate, so as to vest in her the legal property of the term from that time. And that here the pauper had, therefore, both an actual possession, and, by relation, a legal title, if that were necessary, for more than forty days, during which she resided in the same parish. It was answered at the bar, that the administration could not have the effect of making the next of kin irremoveable for a time past, when it must be admitted that she was removeable, unless by reason of any equitable interest which, as sole next of kin, she might have in the premises. To this the Court immediately assented. Afterwards Ld. *Ellenborough* C. J. delivered judgment. This is the case of a *sole* next of kin exclusively entitled, after the death of her mother-in-law, to administration of the personal

estate of the intestate, her father; and the question is, whether the pauper, having after she became such *sole* next of kin to the intestate, resided more than forty days in the parish, in which a leasehold tenement of 40*s*. *per annum* belonging to the intestate lay, thereby gained a settlement in that parish. The grant of letters of administration cannot operate for the purpose of rendering her not removeable, at a time past, when as far as the letters of administration are concerned, she was removeable for want of them; and when any order which might have happened to be made for her removal, (as no letters of administration then existed,) could not, as was held in *Rex*. v. *Widworthy*, be quashed afterwards upon the subsequent grant of them. Can then a person *for this purpose*, become the owner of a chattel real, which had belonged to the intestate, before the actual grant of administration to such person? — upon the death of her mother-in-law, the pauper became *sole* next of kin to the intestate; it was in her power, therefore, at any moment afterwards to have clothed herself exclusively with the legal character and rights of an administratrix.—Ld. *Mansfield*, in *Rex* v. *Cold Ashton*, observes that there is "a great difference between a *sole* next of kin, and where several persons in equal degree have all of them (as in that case they had) an equal right." — In *Rex* v. *North Curry*, Ld. *Mansfield* again observed, that the widow (the pauper in that case) "was not properly, and in the sense of the cases, the sole next of kin." The effect, however, of a forty days' residence by a sole next of kin has never yet received a judicial opinion. *South Sydenham* v. *Lamerton*, was argued and decided on another ground. Adverting to the intimation given by other judges, of what would be their opinion upon such a case as the present, if it should come before them, and to the reason of the thing; according to which the exclusive right to enforce the proper means of acquiring a legal title to the property, coupled with the actual enjoyment of it in the mean time, through the occupation of a tenant, gives so much colour of right to reside, without being removed, within the parish in which the property is situate, as to exempt such residence from being considered as a vagrant intrusion into a parish, in which the party has nothing of *his own*, within the purview and scope of the poor laws, and to the determinations thereupon; we are of opinion that in a case in which the language of no statute upon the subject precludes us from so determining; and where no principle of convenience, nor any decided case, is contravened by such a determination; we are well warranted in considering that a settlement was gained by a residence of forty days within the parish, in which a pauper, thus circumstanced in respect to real property there situate, resided; and of course that the order of sessions, discharging the order of removal, must be affirmed.

Next of kin. — R. v. Horsley.

Rex v. *The Inh. of Darlington*, *M.* 57 *Geo.* 3. 5 *M.* & *S.* 493. 2 *Nol. P. L.* 99. On appeal, an order for the removal of *Elizabeth*, the widow of *Meriton Sedgwick*, and her children, from *Brompton*, in the county of *York*, to *Darlington*, in the county of *Durham*, was confirmed, subject to the opinion of the court of K. B. on the following Case: — *Mary Sedgwick*, of *Brompton* aforesaid, by her will, made the 10th of *December*, 1814, devised the messuage or dwelling-house, with the garth and appurtenances thereunto belonging, situated in *Brompton* aforesaid, then in her occupation,

Devise to the use of trustees in fee, in trust, (after payment of debts,) to receive the rents for the benefit of her brother, *M. S.*, his wife and children, all or any of

Next of kin.

them, during his life, as they should think proper, and after his decease in trust for her nephew, &c.: Held, that *M. S.*, who, after the death of testatrix, by permission of the trustees, occupied until his death, a cottage in the township where the lands devised were situate, did not acquire a settlement thereby; the rents and profits of the said lands having been insufficient to pay testatrix's debts; and *M. S.*, at the testatrix's decease, and from that time until his own decease, being an uncertificated bankrupt.

and her pew in the church of *Brompton*, unto and to the use of *George Jackson* and *William Marwood*, their heirs and assigns, in trust for her niece, *Mary Annabella Sedgwick*, daughter of her brother, *Meriton Sedgwick*, her heirs and assigns for ever; provided always, that if her said niece should die under the age of 21, without leaving lawful issue, then upon the like trust for her niece, *Anna Maria Sedgwick*, another daughter of her said brother, and subject to the like *proviso* in trust for her nephew, *Marmaduke Sedgwick*, son of her said brother, his heirs and assigns for ever; and she directed her trustees to receive the rents of the said messuage, &c., and to place the same out at interest to accumulate; and on such one of her nieces first attaining the age of 21, the said accumulations to be paid to her; and she gave her household goods and furniture, plate, linen, china, and wearing apparel, unto her said two nieces, share and share alike, and devised and bequeathed all her other messuages or dwelling-houses, hereditaments, and real estate, situate in *Brompton* aforesaid, and all her personal estate, (after payment and satisfaction of all her just debts and funeral expenses, and the proving and registering of her will, wherewith she charged the same) unto and to the use of the said trustees, their heirs, executors, administrators, and assigns respectively, in trust to receive, and pay and apply the yearly rents and proceeds thereof, as the same should be received, for the benefit of her said brother, his wife and children, all or any of them, during his life, as they should think proper; and immediately after his decease, the same messuages or dwelling-houses, hereditaments, real and personal estates, should be in trust for her said nephew, *Marmaduke*, his heirs, executors, administrators, and assigns respectively; and if the said *Marmaduke* should die under the age of 21, without leaving lawful issue, then in trust for her nephew, *Richard Meriton*, another son of her said brother, his heirs, executors, administrators, and assigns for ever; and she appointed the said trustees her executors. The testatrix died on the 20th of *June*, 1815, and upon her death, *Meriton Sedgwick* and his family immediately left *Darlington* (where they had acquired a settlement) and went to reside at *Brompton*. *Meriton Sedgwick* did not occupy any part of the premises devised in trust for him or his family, but he occupied, by permission of the trustees, another cottage or dwelling-house, worth 3*l.* or 4*l.* *per annum*, part of the property of the testatrix, devised in trust for the said *Mary Annabella Sedgwick*, and resided therein from *June*, 1815, until his death on the 28th *December* following. *Meriton Sedgwick*, at the time of the testatrix's death, and also at his decease, was an uncertificated bankrupt. The *personal estate of the testatrix, and the rents and profits of the premises, were insufficient for the payment of her debts, and the trustees did not pay or appropriate any part of* the rents and profits for the benefit of *Meriton Sedgwick* or his wife, or any of their children, during the life of *Meriton*, the same being applied to the discharge of the testatrix's debts; and a considerable portion of debt remained undischarged at the time of the said *Meriton*'s decease. The question was, whether the said *Meriton* took, under the devise, such an interest as enabled him to gain a settlement by his residence at *Brompton*. — After hearing counsel (who were called upon by the court) against the order of sessions; Lord *Ellenborough* C. J.

said, — It was evidently the purpose of the testatrix, knowing probably that her brother, *Meriton Sedgwick*, was an uncertificated bankrupt, to abstain from giving him any vested interest; and therefore she leaves this matter entirely in the controul of the trustees. After hearing the argument, I am clearly of opinion that there is not a scintilla of interest in *Meriton Sedgwick*, either legal or equitable, which entitled him to reside irremoveably in the parish. He was only one of several persons to whom the trustees might, in their discretion, have given the rents, if there had been any to dispose of. — *Bayley* J. The only question submitted to our consideration is respecting the interest of *Meriton Sedgwick*; as to which, it seems to me, that it is only by losing sight of the real question that any doubt can be raised. The foundation of this head of settlement is, that a man is not to be removed from his own. But here the trustees had the estate; first, for the payment of debts, which they were unable to pay in the life-time of *Meriton Sedgwick*, consequently were not in a condition to empower him to take any thing. — *Abbott* J. If *Meriton Sedgwick* had taken an equitable interest, the intention of the testatrix would have been defeated; because, whatever he took, being an uncertificated bankrupt, it would have passed to his assignees. — *Per Curiam.* — Order of sessions confirmed.

Next of kin.

R. v. Inh. of Darlington.

Rex v. *Painswicke*, *E.* 14 *Geo.* 3. *Burr. S. C.* 783. 2 *Bott*, 474. 2 *Nol. P. L.* 72. 94. The widow of a man who died seised of a house and orchard in *South Stoke*, entered and resided therein for seven years, without any assignment of dower, and then married a second husband, who resided in this house with her about two years, and then died. — By Ld. *Mansfield*, C. J. and the Court: The mere *right* of dower gained a settlement to herself, she having by *Magna Charta* a right to remain forty days in the house; and being irremoveable for forty days, she thereby gained a settlement. But she could not communicate it to her second husband; as a tenant in dower has no right to *enter* till dower is assigned.

A widow having right of dower, although not set out, gains a settlement by residing upon the estate; but the second husband gains none though he resides with her.

Rex v. *Inh. of Northweald Bassett*, *E.* 5 *Geo.* 4. 2 *B. & C.* 724. 2 *Nol. P.L.* 94. 97. 157. *Millicent Reynolds*, widow, and her six children, were removed from *Northweald Bassett*, in *Essex*, to *Magdalen Laver*. Order quashed on appeal, subject, &c. Case: — *R. Reynolds*, the pauper's husband, died in *May*, 1822, seised of a freehold estate liable to dower in *Northweald Basset*. Dower was not barred, but it had not been assigned, nor have any steps been taken for that purpose. The heir at law has been from the time of his birth, an ideot, and at *Richard's* death was twenty-one years of age. In the year 1820, long after the marriage of *Richard* and *Millicent*, the estate was mortgaged for a term of 1000 years by *Richard*, to secure the payment of 100*l.* The mortgagee received from the tenant the full half year's rent, which accrued after the death of *Richard* at *Michaelmas* last, out of which he paid the sum of 3*l.* to the pauper *M.*, and took from her the following receipt: "The 7th *December*, 1822, received of the heir at law of my late husband, *R. Reynolds*, deceased, the sum of 3*l.*, by the payment of *Richard Hauchin*, (the tenant,) being my third share, as his widow, of the half year's rent of the freehold part of his estate at *Thornwood* common, in *Northweald Bassett*, due *Michaelmas* last." *R. R.* lived in *Magdalen Laver*, and after

A widow, before assignment of dower, has not such an interest in the land of which she is dowable, as to be irremoveable from the parish in which the land lies.

Next of kin.

R. v. Inh. of Northweald Bassett.

his death the pauper, his widow, resided in that parish for some months, and then hired and lived in a cottage in *Northweald Bassett*, which was not on the husband's estate. Before her residence of forty days had been completed in that parish, she became chargeable, and was removed. After argument.—*Abbott* C. J. The case of *Rex* v. *Painswicke*, *Burr. S. C.* 783., was stronger in favour of the settlement claimed than the present case; for there the pauper had actually resided upon the property, out of which the claim to a settlement arose. I think it is our safest course to abide by that decision. If we consider the nature of the widow's right to dower before assignment, it will be seen that she had not any right either legal or equitable to the land. Her legal right was to have dower assigned, her equitable right to have an account of the rents and profits. But in *Rex* v. *Berkswell*, 1 *B. & C.* 542., a right of that nature was held insufficient to confer a settlement. Upon the authority of those two cases, but particularly the former, that being a case of dower, I am of opinion that the widow of *Richard Reynolds* had not any right to reside in the parish of *Northweald Bassett*, and that the order of sessions must be quashed. Order of sessions quashed.

A person is not irremoveable from a mere local privilege or franchise to which he is intitled as a freeman. *Rex* v. *Warkworth*, *E.* 53 *Geo.* 3. *MS. M. & S.* 2 *Nol. P. L.* 158.

(c) Of Joint Tenants, Trusts, Estates vested in the Husband by Marriage, Guardian in Socage, &c.

If an estate be devised to a wife during her widowhood, and then to be sold for the benefit of the children; and one of them marry, and then the testator, and after the widow die, and the married child continue to live therein, a settlement is gained.

Rex v. *Natland*, *E.* 14 *Geo.* 3. *Burr. S. C.* 793. 2 *Nol. P. L.* 88, 89. Two justices removed *Thomas Gibson* and *Hannah* his wife, from *Natland* to *Stainton* in the county of *Westmorland*. The sessions upon appeal quashed the order, but directed the case to be drawn up for the opinion of the judge of assize, and agreed to be determined by his opinion. The case was,—*Alan Court* by his will devised his estate at *Natland* to his wife during her widowhood, and after the determination thereof to trustees to sell, and divide the money equally among his children, of whom the said *Hannah*, wife of the pauper, was one. The testator died, the widow entered and let part of the estate to farm, reserving to herself a dwelling house which was worth about 20*s.* a-year. The pauper *Gibson*, being reduced in his circumstances, came with his wife to live with her mother, the widow, in part of the said dwelling house; the widow died in *June* 1769, the said pauper and his wife continuing in possession of that part of the dwelling house aforesaid. In about a month after the death of the widow, the trustees contracted for the sale of the estate, and in *February* following a conveyance was executed, the children of the said devisor being no parties thereto. The pauper paid no rent to the widow, but from her death he paid rent to the purchaser until *May-day* following, when he quitted the premises. Upon this it was insisted that as the pauper and his wife inhabited in *Natland*, in part of the house devised as aforesaid, from her mother's death in *June*, till the same was conveyed in *February* following; and she being entitled to a distributive share of the money to be raised by sale of the said devised premises, the pauper was not removeable during that time, and, consequently, gained a settlement in

Trustees.

R. v. Natland.

Natland. The opinion of the judge was given in writing in these words, "I have heard counsel on both sides, and am of opinion the settlement is in *Natland, H. Gould.*" Afterwards a rule was obtained in the Court of K. B., to shew cause why the order of sessions aforesaid should not be quashed. But the counsel, instead of shewing cause, objected against the Court's entering at all into the matter, for the judge having heard counsel and given his opinion in writing, this ought to be final, otherwise no judge of assize will ever hereafter accept a reference of this kind. The Court saw it in the same light; and Ld. *Mansfield* C. J. observed, that here was a manifest consent of the parties to this reference to the judge, and therefore it was, like all other references, by consent. He intimated that as at present advised, he was of opinion with the judge: however, after this consent, he thought it very improper to take the matter up again.

Where an estate is vested in trustees for the separate use of the wife, the husband may gain a settlement by residence upon it.

Rex v. *Offchurch, H.* 29 *Geo.* 3. 3 *T. R.* 114. 2 *Bott,* 487. 2 *Nol. P. L.* 92. 95, 96. *Henry West* and his wife were removed from *Thurlaston* to *Offchurch*, which was affirmed at the sessions, subject to the opinion of the Court on a case reserved. *J. West*, the father of the pauper, was settled at *Offchurch*. In *January* 1767 his wife, who was mother of the pauper, died, and in *June* 1767 *J. West* married again with one *Jane Lockley*, with whom he lived in *Offchurch* until 1770, when they both went to *Southam*, where they resided three years without doing any act to gain a settlement there. In 1773 they removed to *Ladbroke*, to a house there held under the following title, (the case then stated that his house was vested by a settlement in trustees, to the separate use of the wife, with the usual clause, that her receipt should be a discharge to the trustees for the rents and profits, and that the rents should not be subject to the husband's debts, &c.); *West* and his wife lived in the house ever since 1773.—Ld. *Kenyon* C. J. said, the question had some novelty in it; where a person resides on his own property he gains a settlement by it, it having been considered as an excepted case out of the acts of parliament. Ld. *Macclesfield* first held, that as a man cannot be disseised of his freehold, he is irremoveable from it, and residing forty days on an estate of his own irremoveable, and gaining a settlement, are synonymous terms. That indeed does not hold in all cases now, for by stat. 9 *Geo.* 1. *c.* 7. a purchaser of an estate for less than 30*l.* shall not acquire a settlement for any longer time than he resides upon it. Then here if this had been the father's own estate, the settlement would clearly have devolved on the son. But it is said, that this is only the equitable estate of the wife. Now supposing it had been the wife's legal estate, the husband would have been seised *jure uxoris*, and by residing upon it would have gained a settlement. Then must it be a legal estate in order to confer a settlement? Certainly not. That was not doubted in *South Sydenham* v. *Lamerton*, or in any of the other cases. The question in that was, Whether the next of kin, without administration, had any estate whatever? and it was held that he had not. In *Rex* v. *Cold Ashton* a doubt was made, whether a next of kin, having the *sole right* of administration, could not gain a settlement, without taking out letters of administration. That shews an *equitable* estate is sufficient to give a settlement. And indeed this position is confirmed by many other cases, and there are none in opposi-

Residence.

R. v. Off-church.

tion to it. Then it is said, that this is going still further, because this is only the equitable estate of the wife; and that even the wife herself had no right to reside upon it, without the consent of the trustees. But she might, beyond all doubt, if she had chosen, have elected to take the *esplees* with her own hands, and that the trustees could not have prevented. The objection then against the husband's gaining a settlement here is too refined: for the wife had a right to reside on her property, and to communicate it to the husband. And although there is no case directly like the present, yet the principles of the decided cases go the length of determining this. The other judges assented, and both orders quashed.

A freehold estate, in the parish in which the pauper lived, descended to his wife and her sisters as coparceners; in a month after, he and his wife contracted to sell their share, but the conveyance was not executed for more than forty days after their title had accrued; Held, that by residence in the parish (without occupation) he gained a settlement.

Rex v. *Dorstone*, *H.* 41 *Geo.* 3. 1 *East*, 296. 2 *Bott*, 523. 2 *Nol. P. L.* 104. 107. Two justices by an order removed *Mansell Powell*, together with his wife and children, by name, from the parish of *Dorstone* to the parish of *Blakemere*, both in the county of *Hereford*. The sessions, on appeal, quashed the order, subject to the opinion of the Court on the following Case: The pauper, *M. Powell*, having gained a previous settlement at *Madley*, went prior to *November* 1778, to reside with his wife and family in *Blakemere* upon a tenement which he rented there at 1*l.* 15*s.* *per annum*. On the 14th of the same *November*, and whilst the pauper resided at *Blakemere*, *T. Matthews* died intestate, seised of a freehold house and lands in *Blakemere*, which descended to the pauper's wife and her two sisters as coparceners, being the grand children and co-heirs of the said *T. M.* On the 14th *December* then next the pauper entered into an agreement, to sell his wife's share of the house and lands to *John Delahay*, husband of one of her sisters. After the agreement was signed, the referees valued the pauper's wife's share of the premises at 28*l.* The deeds not being ready by the 2d of *February*, the pauper complained, and Mr. *Elliott*, agent for *John Delahay*, offered to pay him three month's rent for his wife's share of the premises if required; but the pauper did not require it; the deeds were executed, and the money paid the latter end of said *February* or beginning of *March* 1779. From the 14th of *November* 1778, when the grandfather died, to the execution of the deeds in the latter end of *February* or *March* following, the pauper resided in the tenement he rented at *Blakemere*, but did not occupy any part of the tenement, which descended to his wife and her sisters; the house and gardens were in the occupation of the said *John Delahay* and his wife, one of the coparceners, and the rest of the land was occupied by one *Mead*, who had been tenant to the grandfather. — The counsel who supported the order of sessions, admitted, that after the recent decision of the Court in the case of *Houghton-le-Spring*, he could not contend, that the pauper might not gain a settlement by residing in the same parish in which he had an estate of freehold in right of his wife, although in the occupation of another. But he suggested a distinction between this case and that; that here the title accrued on the 14th of *November*, and within less than forty days, *viz.* on the 14th of *December*, the pauper bound himself to convey away the property. — The Court however said, that the contract was executory, and the conveyance was not actually executed till long after the forty days were expired, till when the title remained in the pauper, and

consequently he gained a settlement in *Blakemere*. Order of sessions quashed.

Residence.

Forty days' residence in a parish where the pauper has a freehold, although subject to a lease for 1000 years, at a pepper-corn rent, is sufficient to gain a settlement by estate. *Rex* v. *Staplegrove*, 2 *B.* & *A.* 527.

Residence without right but without fraud, on a freehold subject to a lease for years.

And where the pauper came to reside on such estate claiming a right, and no steps were taken to oppose his occupation for more than four years, the Court of K. B. held that as there did not appear to have been any fraud or consciousness of wrong in the party so claiming, the residence was sufficient to gain a settlement; the pauper did not come into the parish with any of the motives or mischief which the 13 & 14 *C.* 2. *c.* 12. was intended to restrain. *S. C.*

Estate purchased by the husband for less than 30*l.* and *after marriage* settled in trust to wife's use, does not give the husband a settlement.

Rex v. *Tarrant Launceston*, *H.* 43 *Geo.* 3. 3 *East*, 226. 2 *Bott*, 499. 2 *Nol. P. L.* 78. 81. 85. 89. 99. Removal from *Tarrant Launceston* to *Tarrant Rawson*, and quashed by the sessions. *J. C.* the pauper was settled in *T. R.*: In *June*, 1795, he made a purchase for less than 30*l.* of a leasehold tenement in *T. L.* for 99 years, determinable on three lives; in consideration of 10*l.* advanced to him by *W. D.* he afterwards bargained, sold, and assigned the said estate with the lease, to *W. D.* to hold for the remainder of the term, in trust to let the premises, receive the rents, and thereout pay himself the said 10*l.* with interest, and costs and charges; and after such repayment, to receive and pay the clear rents and profits to the wife of the pauper during her life, to her sole and separate use, not subject to the debts or contracts of her husband, and her receipt alone to be a discharge of the said rent; and after her decease, in case the pauper survived her, in trust to pay the rents and profits to the pauper during his life; there were other trusts after the death of the survivor. After the execution of this deed *W. D.* suffered the pauper to continue residing upon the premises, which he did till he became chargeable, when he was removed. It was urged in support of the order of sessions, 1st, That though the pauper could not gain a settlement in his own right, in respect of the purchase being under 30*l.*, yet after the conveyance to *D.* in trust to repay himself the 10*l.* advanced, and afterwards in trust for the pauper's wife for life, remainder to himself for life; the pauper took a new estate in the premises by act of law, by virtue of which a settlement might be acquired, either in his character of mortgagee in possession, or by virtue of the equitable interest of his wife in it. And they cited for this, *Rex* v. *Edington*, 2 *East*, 288. 2dly, They urged, that, as the trustee did not reject the pauper, the parish officers could not legally procure his removal from the property, in which he, as well as his wife, had a reversionary interest. Upon payment of the 10*l.*, he was to reside on it immediately in right of his wife. On the other side it was said, That this was no mortgage; that here the pauper was not entitled to any thing; he had no intermediate interest left in him. That the pauper had assigned the whole term to *D.* as a security for the 10*l.*, and that was never repaid. That he was no more than a tenant at sufferance. Neither was he entitled to reside there in right of his wife, supposing the 10*l.* to have been paid off, for the husband is by law bound to provide a suitable residence for his wife, and the house being then to be holden in

Residence by guardian in socage.

R. v. Tarrant Launceston.

trust for her separate use, the trustee would have been guilty of a breach of trust to have given it up to the husband, unless in the character of a tenant paying for it. *Rex* v. *Edington* was on the footing of a mortgage: for on payment of the money lent, the premises were to be re-assigned to the party. The pauper's continuing in possession here was a fraud upon the trust. That there is no instance of a settlement gained by the act of the original purchaser of an estate under 30*l.* value. It must come to the party through whom the settlement is acquired by act of law. If the pauper had an equitable interest, it was by his own act; and therefore he could not gain a settlement by it. — Lord *Ellenborough* C. J. This was not a residence of the pauper as mortgagor. He had parted with the absolute interest which he had in the premises. For even when the 10*l.* is paid, (which *non constat* is ever likely to be done) the trustee is to account for the rents and profits to the wife, for her separate use during her life; and I think there is much weight in the observation which was made against any claim of the husband to reside upon property so circumstanced in right of his wife. In the first instance, however, and during the time of his residence there the trustee was entitled to the rents and profits till the 10*l.* advanced by him was paid: it was contingent whether that would ever be done, whether the wife would ever be entitled to the rents and profits; and if she became so, it was also contingent whether the pauper would survive her, so as to have any claim of his own. I should therefore be much inclined to ask with Lord *Mansfield* in *Rex* v. *St. Michael's, Bath* (*Doug.* 631.), "What interest had the pauper in this estate? He made an immediate conveyance to trustees, not a mortgage, to pay off debts." — Upon the whole, this was such a doubtful contingent interest in the pauper, that without clashing with any of the adjudged cases, I am authorised to say that no settlement was gained by the pauper's residence on this property. — The other judges agreed, and the order of sessions was quashed.

A guardian in socage residing on the ward's estate for forty days, gains a settlement in the parish, and cannot be removed from the possession of it at any time.

Rex v. *Oakley*, *H.* 49 *Geo.* 3. 10 *East*, 491. *Bott*, *Cont.* 166. 2 *Nol. P. L.* 79. 90. 105. Removal of *John King* and *Mary* his wife from *Brill* to *Oakley*, both in the county of *Bucks*. *Thomas Hawes* about 38 years ago inclosed a piece of waste land in the parish of *Brill*, and built a cottage thereon, which he occupied till his death. By indenture dated the 3d *November*, 1795, he and his son *Thomas* demised the cottage to *James Hawes* for a term of 500 years, by way of mortgage, for securing 20*l.* and interest, which yet remains unsatisfied. *Thomas* the son afterwards married the pauper, *Mary*, and resided in the cottage with his father until *June*, 1801, when *Thomas* the father died intestate, leaving his son his heir at law, who continued to reside on the estate till *November* in the same year when he died intestate, leaving the pauper *Mary* his widow and four infant daughters, three of whom at the time of the removal were under 14 years of age. The widow continued with her daughters to reside on the said estate for more than forty days (as it was afterwards agreed) after the death of her husband, before her eldest daughter attained the age of 14, and in *October*, 1806, the widow intermarried with the pauper *John King*, whose legal settlement was in the parish of *Oakley*, and who, together with his said wife

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R. v. Oakley.

and her children, resided on the said estate from the time of the said marriage to the time of the removal. The estate at the time of the removal was of a less annual value than 10*l.* It was admitted by the counsel for the appellants, that *Mary King* had gained no settlement by any right of dower, in the said estate. The questions intended to be submitted to the Court were, First, Whether *John* and *Mary King*, or either of them, gained a settlement by their respective residence on the estate, as above stated? Secondly, Whether *Mary King* communicated any settlement gained by her residence before her marriage to her husband *John King*? Thirdly, whether both or either of them were irremoveable, at the time of the order of removal? — Lord *Ellenborough* C. J. There is no doubt in this case, but that the mother, who was guardian in socage to her daughters, had a right to elect whether she would let the estate or occupy it for their benefit, and unless she let it, the law which imposes the duty of a guardian upon her, would necessarily protect her in the personal occupation and superintendance of it. The only difference which can be pointed out between the cases of an executor or administrator, and of a guardian in socage, in this respect, is that the one is accountable for the profits by statute, and the other at common law. The law considers a guardian in socage as entitled to the possession of a ward's property, and incapable of being removed from it by any person; such a guardian has not the mere office or authority, but an interest in the ward's estate. It is laid down in *Wade* v. *Baker*, 1 *Ld. Raym.* 131. that he may maintain trespass and ejectment, avow for damage feasant, make admittance to copyhold, and lease in his own name. He cannot indeed convey the property absolutely as an executor or administrator, because the nature of the trust does not require it in the one case, as it does in the other, but he may dispose of it during his guardianship, though accountable afterwards to the heir. The widow therefore had such an interest in the estate as rendered her irremoveable from it. — *Grose* J. The question is, Whether the widow was irremoveable from this property for forty days? She had a right during her guardianship, either to lease or occupy the estate, and if she chose to occupy it, she was irremoveable from it as from her own, though liable to answer afterwards to the ward for the profits. — *Le Blanc* J. The case though new in circumstance, is not new in principle. It is governed by the decisions which have taken place, that in order to make persons irremoveable on account of having property in the parish, it is not necessary to have a beneficial interest in it for themselves, but it is sufficient that they reside there for some beneficial purpose to another. Now a guardian in socage has a right to the possession, and until she leases, it is for the interest of the wards, that she should occupy the estate, and there can be no right to remove her from it to their prejudice, as in the case of an administrator, or of a sole next of kin, even before administration granted, who has a right to reside on the leasehold property, and such residence for forty days will give him a settlement in the parish.—*Bayley* J. If a guardian in socage can maintain trespass and ejectment in his own name, and avow for damage feasant on the land, this shews that he has a right to occupy it. And this is confirmed by the old method of pleading by guardian in socage, which was, that he entered as

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guardian into the tenement in question, and was possessed. In like manner an administrator has a right to the possession of leasehold property, and is only accountable for the profits. Order of sessions quashed. (*a*.)

Mother of an infant copyholder held to be legal guardian of the copyhold (there being no custom of the manor for appointing one), and therefore entitled to reside irremoveably on the estate.

Rex v. *Wilby*, *E.* 54 *Geo.* 3. 2 *M.* & *S.* 504. 2 *Nol. P. L.* 105. Removal from *Debenham* to *Wilby*; confirmed, subject, &c. &c.—Case: In 1794, *John Bedwell*, a settled inhabitant of *Wilby*, went with a certificate to reside in *Debenham*. In 1807, he purchased of one *Smith* a copyhold estate, holden of the manor of *Bloodhall* in *Debenham*. After his decease, his widow and family continued to reside on the premises for the period of 143 days, and until their removal by the present order. No instance appeared on the rolls of any actual assignment of dower; but it was usual for *femes covertes* to join with their husbands in securities (surrenders by way of securities) of estates possessed by such husbands in their own right within the said manor, though never expressly stated in bar of dower; and the pauper had actually joined with her husband in the before-mentioned conditional surrender of these premises. After argument Lord *Ellenborough* C. J. said, that it seemed to the Court that the mother was the guardian of the infants copyhold, and as such was entitled to occupy the same irremoveably. Orders quashed.

No guardian in socage of an equitable estate.

Rex v. *Toddington*, *E.* 58 *Geo.* 3. 1 *B.* & *A.* 560. 2 *Nol. P. L.* 100. There cannot be a guardian in socage in an equitable estate; and, therefore, where a pauper married the widow of a man who had paid for and been let into the possession of a freehold cottage, and had died leaving a daughter, but without having had any legal conveyance executed to him in his lifetime, it was holden that the pauper's residence in the cottage for forty days did not confer a settlement on him, the widow not being guardian in socage to the daughter. It was held also that the Court will not take notice of doubtful equitable estates. Ld. *Ellenborough* C. J. said, This is not an estate so clearly equitable, that a court of law can presume that a court of equity would, if applied to, clothe the party with a legal right to it. The case of the *King* v. *Oakley* is clearly distinguishable from this; that was decided on the assumed ground of a legal estate. But this is at most a question of an equitable estate only, and we are to consider, not only whether a court of equity would order a legal estate to be conveyed, but whether in that case the conveyance would operate *ab antecedenti*, so as to constitute a legal estate in the father which would descend upon the heir; for unless that be so, the guardianship in socage, which is one of the incidents of the legal estate descending with it, will not go to the widow. I think, therefore, that the widow in this case was not, nor ever has been guardian in socage. If so her husband could not by residence in the parish gain a settlement, and the order of sessions must be confirmed.

The lord of a manor granted

Rex v. *Inh. of Berkswell*, *E.* 4 *Geo.* 4. 1 *B.* & *C.* 542. 2 *Nol. P. L.* 103. Two justices, by their order, removed *J. Matthews*, his

(*a*) In *Osborne* v. *Carden*, *Plow.* 293. The Court considered that *the whole estate and interest* of the lands is in the guardian in socage (which must be understood during the guardianship) to the *use* of the infant. And in *Bedell* v. *Constable*, *Vaugh.* 182, 183., he is said to have an *interest* and not merely a naked authority, though it be an interest joined with a trust for his ward.

wife and children, from the parish of *Berkswell*, in the county of *Warwick*, to the parish of the *Holy Trinity*, in the city of *Coventry* and county of the same city. The sessions, upon appeal, quashed the order, subject to the opinion of this Court on the following Case: — Previous to the residence at the parish of *Berkswell* the pauper was settled in the parish of the *Holy Trinity*, the appellant parish. In the year 1808, a lease for thirty-one years was granted by the lady of the manor, under the provisions of an inclosure act, to one *Hands*, of a cottage situate in the parish of *Berkswell*, at the annual rent of one shilling. *Hands* was residing in the cottage at the time of the lease, and continued to do so afterwards for upwards of a year, when he died intestate, leaving a widow and three daughters, one of whom was married to the pauper. Letters of administration were granted to the widow, but no distribution was made of the intestate's effects. After the death of *Hands*, his widow lived in the cottage for about two years and upwards. One of the other daughters, with her husband, resided there for two or three years more, and then the pauper and his wife came, and resided there for some years, and until the period of their removal, with the permission of the widow, she occasionally helping them, and always paying the annual rent of one shilling, reserved by the lease. The pauper never paid any rent, either to the widow or the lady of the manor. The question was, whether, by such residence, the pauper gained a settlement in the parish of *Berkswell*. — After argument. — *Abbott* C.J. I am clearly of opinion, that the pauper had not any such interest as would have enabled him to say, "I will come and reside on this property." If the widow of *Hands* had refused to let him do so, a court of equity would not have assisted him. The next of kin had not even an equitable interest; but had a mere right to an account, and, perhaps, upon that it might have turned out that the widow had paid debts to a greater amount than the value of the leasehold property in question. The order of sessions must, therefore, be quashed. — *Bayley* J. The case of *Rex* v. *Toddington* (a) is decisive. Ld. *Ellenborough*'s judgment, there, shews in what cases an equitable interest will give a pauper a right to come and reside upon the property This clearly is not such a case, even supposing the pauper's wife to have had an equitable interest. *Holroyd* J. concurred. Order of sessions quashed.

Residence. — a lease of a cottage for thirty-one years to *A*, who resided in it above a year, and died, leaving a widow and three daughters. Administration was granted to the widow, but no distribution of the estate was made. After his death, the widow, and, by her permission, one of the daughters and her husband resided in it some years: Held, that the daughter, or her husband in her right, had not any equitable estate in the cottage, and that no settlement was gained by their residence in it.

Rex v. *Ilmington*, *T.* 6 *Geo.* 3. *Burr. S. C.* 566. 1 *Blac. Rep.* 598. 2 *Bott*, 471. 2 *Nol. P. L.* 80. *Eliz. Stanley* purchased a leasehold tenement in the parish of *M.* for the sum of 6*l.* for the remainder of a term of 1000 years. She resided upon the same about nine years, and then was married to *T. E.* who resided with her upon the same tenement about sixteen years; then he died, and after his decease she continued upon the premises for several years, and at last sold the same for the sum of 6*l.*; and after such sale, was removed by order of two justices to *Ilmington*, the place of her husband's settlement before their intermarriage. And the sessions upon appeal confirmed that order. It was moved to quash these orders. On shewing cause,

A woman before marriage purchases under 30*l.*, her husband after marriage resides on the premises, he thereby gains a settlement, and the settlement so gained will be communicated to her.

(a) See *Rex* v. *Widworthy*, *Burr. S. C.* 109. *Rex* v. *Stanton*, 2 *M. & S.* 461.

Residence.

R. v. Ilmington.

it was urged in support of the orders, that this was a purchase by the wife, clearly within the words of the statute, under the value of 30*l.* and the husband had no claim to it but by virtue of that purchase. The term survived to the wife on her husband's death. And if he had survived her, he could not have had it without taking out administration to his wife. On the contrary, it was answered, that this, though a new case, yet was within the reason of former cases. In cases of descent, a settlement is gained, though the original purchase be under 30*l.* value. And there is as much reason why a settlement should be gained in the present case. This woman had an estate vested in her when *Evans* married her, which upon the marriage vested in him. The husband gained a settlement in *Mickleton* by forty days' residence upon his own estate; and his settlement communicated itself to the wife. And of this opinion was the Court. And both the orders were quashed.

A leasehold cottage is devised to *A. P.* with liberty to the paupers to dwell therein during their lives; by residence under the will they gain a settlement.

Rex v. *Woburn*, *E.* 14 *Geo.* 3. *Burr. S. C.* 785. 2 *Bott*, 474. 2 *Nol. P. L.* 79. The paupers (two sisters) resided at *E.* under a certificate from *Woburn.* A person entitled to a long term of years in a cottage in *Eversholt*, after having devised it to *Andrew Powell*, son of their father *William Powell*, adds, "it is also my will and pleasure, that the said *William Powell* (their father) and his wife and children, shall have free liberty and power, during their natural life, to dwell in it." And accordingly, *W. P.* and his wife, and their said son *A. P.* and the two daughters (the paupers) resided in it till *W. P.*'s death. The Court held clearly that the settlement of the two paupers was in *Eversholt.*

Schoolmaster in the occupation of a school-house, &c. under trustees created by will, and directed to appoint such master; Held, to have a life interest therein, and to gain a settlement by forty days' residence.

Rex v. *Owersby-le-Moor*, *E.* 52 *Geo.* 3. 15 *East*, 356. *Bott, Cont.* 168. 2 *Nol. P.L.* 71. 88. *Mary* the wife of *William Saltfleet* deceased, late of *Maltby-le-Marsh*, schoolmaster (and their children), were removed from the said parish to the parish of *Owersby-le-Moor*, *North-End*, both in the parts of *Lindsey*, in the county of *Lincoln.* The sessions on appeal confirmed the order, subject, &c. — In the year 1705, Mrs. *Bolle* devised, amongst other things, a farm in *Maltby-le-Marsh*, and all thereto belonging, to certain persons named in her will, and to their heirs in trust, that they and the survivors, &c. and the heirs, &c. of such survivor, should employ and dispose of all the rents, &c. as follows, *viz.* that thereout there should be yearly paid to the poor of the said town 40*s.* and that all the rest of the rents of the said farm should be yearly for ever paid to a fit person, to be from time to time *nominated and elected by the said trustees*, who should be a *schoolmaster*, to teach the poor children of the said town of *Maltby* to read the Bible. On *June* 13, 1807, the following agreement was entered into between *William Saltfleet* (the husband of the pauper) and *James Digby* and *Catharine Digby* his wife (the heir-at-law of the only surviving trustee appointed by the said will). "Memorandum of an agreement made 13th of *June*, 1807, between *J. D.* and *C. D.* his wife of the one part, and *W. S.* schoolmaster of the other part: Whereas the said *J. D.* in right of *C.* his wife, is possessed of or entitled to a certain school-house, &c. situated at *Maltby*, in the county of *Lincoln*, which they have agreed to *let* unto the said *W. S.* for the purpose and in the manner as is hereinafter mentioned; and

Residence by cestui que trust.

R. v. Owersby-le-Moor.

it is hereby agreed by and between the said parties thereto, *that the said* W. S. *shall have the possession and the use and occupation of the said school-house, yard, garden, and premises, for the purpose of teaching the poor children of the said parish of* M. *to read in the Bible, pursuant to the will, devise, and bequest of Mrs.* Bolle *deceased;* and in consideration of the said *W. S.* agreeing to teach the said poor children, &c. *he the said* W. S. *is to reside upon the said premises rent free, and to be paid and allowed by the said* J. D. *and* C. *his wife*, or the survivor of them, or the heirs, &c. of the said *C. D. a salary for the first year that he shall so teach of* 10*l.*, such year to commence from 1st *August* next, and the sum of 15*l.* for every year after that he shall so continue to teach the said poor children to read in the Bible as aforesaid. [Then a covenant by *D.* to pay as aforesaid.] [Then further agreement, that] in case any reasonable complaint shall be made to the said *J. D.* and *C.* or the survivor of them, or the heirs, &c. of the said *C. D.* it shall be lawful for him, &c. to suspend the salary of the said *W. S.* for two years, and apply the same to such purposes as the said *J.* and *C. D.*, &c. shall think proper, without being liable to make any remuneration to the said *W. S.* And lastly, that in case of the death of the said *W. S.* it shall be lawful for the said *J. D.* and *C.* his wife, or the survivor of them, or the heirs, &c. of the said *C.* to turn out from off the said premises *the executors, administrators, or assigns* of the said *W. S. and to appoint another person to the situation of schoolmaster thereto*, in such manner as he, &c. may think proper." *W. S.* (*June* 13. 1807.) entered upon the school-house, &c. being part of the farm so devised in trust as aforesaid, and he resided upon those premises till his death, about three years and a half afterwards. He taught the poor children of the parish to read during that time, and received from *J. D.* for the first year a salary of 10*l.* and afterwards a salary of 15*l. per annum.* The annual value of the school-house, yard, and garden, is about 5*l.* The remainder of the devised premises, consisting of a farm-house and twenty acres of land, was occupied by *C. Barton*, the tenant of *J. D.* at the rent of 52*l.* 10*s. per annum.* The court of sessions thought the above appointment fraudulent, and in no respect consistent with the will. — *Per Curiam,* We are of opinion that a settlement was obtained in *Maltby-le-Marsh*, and that the order of sessions and the original order of removal ought to be quashed. The agreement of the 13th *June*, 1807, was, we think, in substance an appointment of *William Saltfleet* to the situation of schoolmaster, to teach the poor children of *Maltby* to read the Bible: and though the sessions have stated that that appointment was *fraudulent*, and in no respect consistent with the will of Mrs. *Bolle*, it is clear that their meaning is not that it was *a colourable appointment*, under which he was not to discharge the duties of schoolmaster, but that it was an appointment upon such terms as tended to deprive him of a great part of the emoluments attached to the situation. There was no fraud in him; he was to discharge every duty the situation of schoolmaster required; but the fraud was in those who appointed him, in attempting to withhold from him what Mrs. *Bolle*'s will entitled him to receive. By that will the schoolmaster was to have all the profits of a farm at *Maltby*, except the yearly sum of 40*s.* which was to be paid to the poor of the parish.

Residence by cestui que trust.

R. v. Owersby-le-Moor.

The schoolmaster therefore for the time being was, to a considerable extent, to the extent of all but 40*s.* a-year, the *cestuy que trust* of the farm; and had the trustees kept in their own hands sufficient to raise the 40*s.* a-year, and put the rest into the possession of the schoolmaster, they could not have dispossessed him whilst he continued schoolmaster, unless he had misused the property, or unless what they retained to raise the 40*s.* a-year had proved insufficient for that purpose. In this case the trustees allowed *William Saltfleet* to have the possession of a house, yard, and garden, which were part of this farm, and they retained what was greatly more than sufficient to answer the 40*s.* a-year. He had this possession therefore not by purchase, so as to be within the statute 9 *Geo.* 1. *c.* 7.; not by renting so as to be within the statute 13 & 14 *Car.* 2. *c.* 12., but in the character of a *cestuy que trust*, residing upon what was for the time substantially his own; and as the trustees could not have removed him, we are of opinion that this residence for more than forty days gave him a settlement in this parish, and that the removal of his wife and children from this parish cannot be sustained. — Orders quashed.

(*d*) Of Estates gained wrongfully, or by imperfect Contracts.

Living in a cottage which came to the pauper by descent, gains a settlement; though the pauper's father built the cottage upon a waste without the lord's consent: For a justice of peace cannot determine a man's title.

Ashbrittle v. *Wyley*, *M.* 11 *Geo.* 1. 2 *Sess. Ca.* 115. 1 *Stra.* 608. 2 *Bott*, 460. 2 *Nol. P. L.* 73. 81, 82. A poor man built a cottage upon the waste belonging to my lord *Pembroke*, without his licence, who never offered to disturb the man in his possession, and he lived in this cottage for thirty years, and by his will left three guineas in the hands of his executors to purchase this cottage of my lord *Pembroke*. Upon his death, *Elizabeth* his only child, and heir-at-law, entered into the cottage, and after married one *Barrow*, and lived in the cottage, and they were in quiet possession for three quarters of a year, and then sold it. The question was, whether the daughter and her husband *Barrow* had gained a settlement, by virtue of this inhabitancy, in the parish of *Wyley*, in which their cottage was. It was argued, that this inhabitancy gained no settlement: The cottager was a disseisor, and had no right to build upon the waste, and was at any time removeable by the lord of the waste; and if he might have been removed within forty days, his long possession shall give no title; for he must only be considered as a tenant at will, and consequently his continuance upon the cottage, though never so long, could give him no settlement: and if the cottager had no right of settlement, none claiming under him shall be in a better condition. If one inhabits by virtue of a lease, or other good title, for forty days, he gains a settlement. But the inhabitancy in this case was without any good title, and consequently can gain no right of settlement. These objections were answered by the Court, who held it clearly to be a good settlement. And though it was further objected that the cottager himself was sensible he had no right, by his devising money for the purchase of a term under the lord of the waste, yet it was over-ruled. — And, by all the Court, it was held, that when a man hath such a possession as he cannot be removed from, and hath enjoyed that possession forty days, he

thereby gains a settlement; and that is the reason why a copyholder or lessee for years gains a settlement by an inhabitancy for forty days: for in those cases the justices of the peace cannot determine his right. This present case is very strong; for the thirty years' possession of the cottager, without interruption, would have been a good title in an ejectment; and for that reason the justices of the peace cannot determine his title. It appears upon the face of the order, that the cottager had a good title in ejectment, and in any case but in a real action. — Ld. C.J. *Raymond* said, he had known recoveries upon a twenty years' quiet possession, and twenty years possession is a title to a plaintiff in ejectment as well as to a defendant. After so long a possession as this, it shall be presumed that the cottager had a licence to erect the cottage; but this case goes further, for besides the thirty years' quiet possession of the cottage, here is a descent cast upon the daughter, who was heir to the cottager, and *primâ facie* it is an inheritance in the daughter; and an estate by disseisin is in law a good estate, and a fee simple, till it be defeated. Wherefore all the Court held, that the justices had no jurisdiction in this case; for they could not examine into the title to the land. And the settlement in the parish of *Wyley* was adjudged to be good.

Residence on estate gained wrongfully.

Ashbrittle v. Wyley.

Twenty years possession is a title.

Rex v. *Bitton*, *M.* 9 *Geo.* 3. *Burr. S. C.* 631. 2 *Bott*, 472. 2 *Nol. P. L.* 83. The pauper, *George Battman*, built a cottage upon the waste, without leave of the lady of the manor; was not rated, nor paid any taxes; but continued nineteen years and a half in possession. About twenty years ago, the pauper *Battman* was turned out of possession of the said cottage, by an ejectment brought by a person claiming the same under a mortgage thereof made by the said *Battman* for the sum of 15*l.* And some time after that (which was more than twenty years ago) the said *Battman* and the mortgagee sold the said cottage to one *Williams* for 28*l.*; and the said *Battman* had 5*l.* part of the purchase money. — The Court were all of opinion, that it appeared to be a possession of more than twenty years. He was himself in possession nineteen years and a half: and the mortgagee's possession must be also considered as his possession. And it was adjudged a good settlement.

Living in a cottage built without the consent of the lord of the manor gains a settlement.

Rex v. *Garway*, *M.* 8 *Geo.* 3. *Burr. S. C.* 632. 2 *Bott*, 471. 2 *Nol. P. L.* 73. A cottage was built on the waste by the pauper's father above seventy years back; the pauper resided there upon his father's death, and paid an acknowledgment of 2*s.* 6*d.* to the lord of the manor for the last thirty years, but it did not appear that the father had paid any. He gained a settlement. And it seems that the Court does not require that strict statutory title by adverse possession of twenty years, which is necessary, in questions of title in ejectment. But they will presume a conveyance to legalise the possession in cases of long and uninterrupted enjoyment, unless the contrary appears.

Conveyance presumed from peaceable enjoyment less than 20 years.

Rex v. *Butterton*, *H.* 36 *Geo.* 3. 6 *T. R.* 554. 2 *Bott*, 495. 2 *Nol. P. L.* 81. 84. *Ralph Oakden*, having purchased a piece of land in fee, gave his son-in-law, *J. H.*, the pauper's father, a part of it, but it did not appear that he ever executed any conveyance thereof. *J. H.* built a house on it, which cost him above 100*l.*;

Grant of land without conveyance, grantee builds a house, &c. and occupies 18 years.

Residence.

R. v. Butterton.

resided on it fourteen or fifteen years, without paying rent or acknowledgment to *R. O.* when he quitted it, and received the rent until his death, three years after. *R. O.* died in the lifetime of *J. H.* leaving another daughter and grand-children by a son pre-deceased. — Ld. *Kenyon* C. J. As twenty years have nearly elapsed since the time when this land was given to the pauper's father, and as no claim has ever since been made, either on the pauper or his father, the case of *Ashbrittle* v. *Wyley*, (*ante*, p. 624.) is an authority to shew, that the Court ought not to permit the title to the estate to be determined on an order of removal. The strict rules to be observed on the trial of ejectment, ought not to be applied to settlement cases. After such a length of time as this, perhaps a conveyance may be presumed to be executed.

§ XII. 2.

And in Rex v. *Cold Ashton*, *post*, 652. where there had been a possession for nearly twenty years. — *Wilmot* J. said, There ought not to be a nicety of computation in a settlement case, but the Court may presume a conveyance. And even if no conveyance were executed to the pauper's father, and a claim were now made by *Oakden*'s heir-at-law, he would perhaps be told in a court of equity, that, as *O.* stood by while the pauper's father built on this land, and treated it as his own, he could only resume the possession on certain terms.

See *Rex* v. *Geddington*, *T.* 1823. 2 *B. & C.* 129. *post*, p. 545.

The son borrowed money of his father to purchase land, on condition by parol to build a house thereon, which the father and mother were to have for their lives. The house was built, and the father lived in it three years, rent free, and died: Held, that the father had no legal or equitable estate in the house, and gained no settlement by the occupation, and that the mother was not entitled to reside in it irremoveably.

Rex v. *Standon*, *E.* 54 *Geo.* 3. 2 *M. & S.* 461. Removal from *Eccleshall* to *Standon*, confirmed, subject, &c. Case: — *Ann* is the widow of *Joseph Farmer*, deceased, who about five years ago was settled at *Standon*. About that time *Joseph* their eldest son agreed to give 65*l.* for a piece of land containing three roods and thirty-three perches, situate in *Eccleshall*, which was offered to sale by the commissioners under an inclosure act; but not having sufficient money himself, he applied to his father, who consented to advance 20*l.* (which had been left to his wife *Ann*) upon the following conditions: *viz.* that a house should be built by the son upon the land, which the father and mother were to have for their lives, and the life of the survivor; after whose death the same was to go to the son; but it was also agreed that the father and mother were not to sell or dispose of the place, nor to take any other family into the house. The father was at that time advanced in years, and the son wished to shew his good will towards him and his mother, and to assist them all he could. This agreement was not reduced into writing, but the father having advanced the 20*l.* to the son, the whole 65*l.* were then paid by the son for the purchase, and the land was conveyed by the award of the commissioners to the son in fee. The house was built immediately afterwards at the son's expence, but the father assisted personally in building it. When finished, the father and mother took possession of it with the consent of the son, who did not think himself at liberty to turn them out, nor did he ever attempt to do so. The son lived in another house, and his father and mother paid no rent to any person, and after having resided in the house about three years, the father died, and the mother continued to live in it as before, with the son's consent, until her removal under the order to *Standon*. After argument, Lord *Ellenborough* C. J. said, It appears clearly, that no estate, either legal or equitable, was conveyed to the father or mother, nor any such interest probably as

a court of equity would have decreed to be conveyed. They had nothing more than a conditional and qualified licence by parol to occupy, irrevocable perhaps, except on breach of the condition not to let in any other person. This is not like the case of a devise; here is no gift or grant of an interest in the land; and the parties seem to have been aware of that, for they stood by and suffered the whole to be conveyed to the son, resting merely on his parol licence that they should live there. — *Le Blanc* J. The ground on which this case is rested, is, that a party cannot be removed from his own estate. The cases decide that if a party has clearly an equitable estate he shall not be removed from it. But the Court must see clearly that he has an equitable estate which would be perfected in him by the intervention of a court of equity. I think the argument here has failed in shewing that these parties could, by resorting to a court of equity, have obtained a conveyance of the legal estate. *Per Curiam.* Order of sessions confirmed.

Residence.

R. v. Standon.

Rex v. *Calow*, *T.* 54 *Geo.* 3. 3 *M.* & *S.* 22. 2 *Nol. P. L.* 84. Removal from *Wirksworth* to *Calow*, confirmed, subject, &c. — A *prima facie* settlement in *Calow* being proved by relief given to the pauper's father about thirty years ago, it was proved, in answer, that about the same period the grandfather of the pauper gave the pauper's father a piece of land in *Wirksworth*, upon which the father immediately built a house, and lived in it with his family for several years. He then resided in a third parish for some years, during which time he let the house and received the rent for it. Ten years ago he returned to the house, and has resided in it ever since, and never paid any rent or acknowledgment for the house or land on which it stood. The pauper was a part of his father's family at the time the house was built, and continued so for about fifteen years afterwards, when he married, left his father's family, and never returned. The pauper's grandfather resided in *Wirksworth*, from the time when the house was built until his death about seven years ago, within a few yards of his son, during which time he received occasional relief from *Calow*. In support of the order of sessions, it was admitted that the pauper's father gained a settlement in *Wirksworth* by residence in the house, but denied that such settlement was communicated to the pauper, and for this reason, because the pauper had ceased to be a part of his father's family before the father's title to the house was perfected by a twenty years' possession, and consequently before the father had a right to reside on it irremoveably so as to gain a settlement for himself. At the time the pauper quitted his father's family, his father had a mere naked possession unaccompanied with any pretence of title. — Lord *Ellenborough* C. J. It is true that the father, at the time when the son ceased to be a part of his family, had been in possession of the estate but fifteen years; but he was in under some title or other under which he has continued the possession for fifteen years more and up to the present time; therefore, looking at the whole, we must infer a title in him at the former period. The subsequent possession reflects light back on the title under which he before held: and the Court will presume that his possession originated under a title, which would have prevented him from being dispossessed at the time when the son quitted his family. — *Bayley* J.

Son builds a house on land given him (by parol) by his father, and continues in possession of it for thirty years without paying any rent or acknowledgement, sometimes residing in the house with his family, and at other times letting it, and receiving the rent: Held that the grandson (the pauper) who ceased to be a part of his father's family fifteen years after the building of the house, was entitled to the settlement which the father gained by residing in the house.

Residence.

R. v. Calow.

It cannot be said that the father was in without any pretence of title, for the case states that he had a gift of the land. — *Dampier* J. The subsequent possession legalises the former possession, and shews that it was of right. Orders quashed.

(e) Of Profits partaking of the Realty.

Living upon a leasehold estate out of which and other personal property the person has a rent charge only, gains no settlement.

Rex v. *Stockley Pomroy*, *H.* 14 *Geo.* 3. *Burr. S. C.* 762. 2 *Bott*, 473. 2 *Nol. P. L.* 70. The grandmother of *John Whitten*, the pauper, being possessed of an estate in the parish of *Cheriton Fitzpayne* for a term of years determinable on the death of *Sarah Whitten*, mother of the said pauper, devised to him 10*l.* a-year out of her estate during his said mother's life. The testatrix died, leaving at her decease the said leasehold estate, and effects to the amount of about 32*l.* The pauper, being considerably in debt, in order to avoid his creditors, went to reside in the said parish of *Cheriton Fitzpayne*, and there resided with his mother on the said leasehold estate, and carried on the business of a jobber of cattle, during the continuance of the annuity, and while the same was due and payable, for the space of forty days and upwards.— By Ld. *Mansfield* C. J. There is no colour for adjudging the pauper to have gained a settlement in *Cheriton Fitzpayne*. He did not go thither to reside upon his own: he absconded there to avoid his creditors: This was no specific legacy, it is payable out of the whole personal estate. But if it were a specific legacy, a specific legatee has no right to go and live upon the estate. If it had been a rent-charge out of a freehold, it would not give a right to live upon such freehold. But this man had only a pecuniary demand: There was no colour for his going to live upon this leasehold estate as his own.

Rex v. *Melborne*, *E.* 18 *Geo.* 2. *Burr. S. C.* 244. 2 *Bott*, 162. 2 *Nol. P. L.* 71. The pauper's husband during his residence at *Melborne*, officiated as schoolmaster there. During his continuance in the school, certain lands were by deed indented and inrolled, conveyed in trust to permit certain persons, being vicars of certain parishes, and the succeeding vicars, to take the profits thereof to employ the same for certain purposes; one of which was as follows: "Also the yearly sum of 10*l.* to the charity school of *Melborne* in the county of *Derby*, to be paid to the vicar there for the time being." And this sum was yearly received by the pauper's husband from the vicar of *Melborne*. And it was held that this annuity of 10*l.* *per annum* did not appear to be appropriated to the schoolmaster, and that he had no freehold in it; and could therefore gain no settlement by receiving it.

Right to a stinted common of pasture, to cut peat, and get limestone during residence, never exercised: Held not to amount to such an estate as will

Rex v. *Warkworth*, *E.* 53 *Geo.* 3. 1 *M. & S.* 473. *Bott, Cont.* 174. 2 *Nol. P. L.* 22. 158. Upon an appeal against an order of two justices, removing *William Forster*, his wife, and children, from the parish of *Alnwick* to the township of *Warkworth*, both in the county of *Northumberland*; the sessions confirmed the order, subject, &c. — Case: The pauper was a freeman by descent, and had been admitted to his freedom twenty-five years before the order of removal. The pasturage of the moor is of considerable value, and the freemen of *Alnwick* and no others, are entitled to common of pasture thereon, each freeman being entitled, when

resident, but not otherwise, to the pasturage of five stints of his own cattle, that is to say, five cows, or twenty-five sheep: the freemen have also a right to dig and cut peats, furzes, turves, and bushes upon *Alnwick* moor for their own use, and to get limestone, slates, and free-stones in the open quarries of that moor: they have the privilege also of setting up their stalls in the market-place, without paying any toll or stallage to the lord, and of having their children educated free of expence at the town school, at which school two of the children named in the order were placed at the time of the removal. — The question for the consideration of the Court was, Whether the rights of the pauper, as a freeman of the borough of *Alnwick*, amounted to an estate from which he was not legally removeable under the statute 13 & 14 *Car.* 2. *c.* 12. — *Grose* J. The question is, Whether the pauper, *W. Forster*, was irremoveable from his own estate. In order to determine that, we must first enquire what estate he had. Now it appears that he had neither land nor house: it is said, however, that he had a right of common; but supposing he had, it does not appear that he was ever in the enjoyment of, or had any cattle wherewith to exercise that right. The profit *a prendre*, or easement, as it has been called, never existed in him; how then can he be said to have been resident on his own? It cannot be considered as a residence on his own, when in truth he never had it. It would be absurd so to consider it. — *Le Blanc* J. I think this is not in strictness a right of common, nor can it properly be said to be a tenement; it is a mere franchise. The argument, however, has been carried this length, viz. that supposing it to be only a franchise, still the pauper was irremoveable from it. But to this I cannot accede. In the case, for instance, of a freeman of a corporation, who has a right of suffrage for the election of a mayor, or any other of the officers belonging to the corporate body, has it ever been decided that such a franchise made the person entitled to it irremoveable? Here the pauper, as a freeman of the town, was entitled, if he had any cattle, to turn them on the moor. This, however, was a mere personal privilege, wholly unalienable, and not falling within the legal definition of a right of common. A privilege of this sort, I believe, has never yet been holden to be such an estate as to make the person entitled to it irremoveable. It is a strong circumstance, that notwithstanding the existence of such rights in different parts of the kingdom, no attempt like the present has hitherto been made. It appears to me, therefore, that this does not fall within the purview of those cases which have decided that a party is not removeable from his own; and which doctrine, I admit, has been extended to cases where a party was merely residing in the parish in which his estate was situate, and not upon the estate itself. *Rex* v. *Sowton*, *Rex* v. *St. Nyott's*, *Rex* v. *Houghton-le-Spring*, *Rex* v. *Dorstone*. — *Bayley* J. The case does not find that the pauper had any house in which he was entitled to reside; and as a freeman he had no right of residence; but that must be acquired by other means. When he can obtain a residence, then as freeman he is entitled during such residence to turn cattle on the common. But when he removes, he loses this privilege. I am not aware of any case, in which a privilege of this description has been holden to be sufficient to confer a

Right to a stinted common of pasture, &c.

render the party irremoveable.

Right to a stinted common of pasture, &c.

R. v. Warkworth.

settlement. It is a mere local privilege, and attached to the person so long only as he is resident. From the frequency of these rights, which exist in many corporations in the kingdom, settlements must have been claimed in respect of them, had they been deemed sufficient for that purpose. This case is very different from the cases of removals from landed property. Order of sessions confirmed.

(*f*) Of Mortgages.

An estate conveyed to trustees to be sold to pay mortgages and other debts, will not give to the person conveying it a settlement by a subsequent residence till actually sold. A mortgager in possession may gain a settlement.

Rex v. *St. Michael's, Bath, E.* 21 *Geo.* 3. *Doug.* 630. *Cald.* 110. 2 *Bott*, 475. 2 *Nol. P.L.* 53. 85. 98. The pauper, being legally settled in *St. Michael's* and residing there, conveyed two houses, whereof he was seised in fee at *Walcott*, to trustees, in trust to sell and pay mortgages and other debts, and to pay the surplus money, if any, to the pauper. Some short time after, one of these houses becoming void, the trustees having possession thereof, employed a woman to clean and air the house, and delivered to her the key for that purpose; which having done, she placed the key among some things of her own, intending afterwards to re-deliver it to the trustees. But the pauper's wife took it from thence, and took possession of the vacant house, and she and her husband went and lived there about a year and three-quarters. One of the trustees, seeing her conveying her goods thither, gave her notice that she was doing wrong, not having the consent of either the trustees or creditors. But the said house still remained unsold, and it was stated that the value of the premises was 650*l.* and the debts 880*l.* It was argued, that the beneficial interest in the estate remained in the pauper till sold; and for this was cited the case of *Natland;* and that residing upon it, as his own, he was not removeable from it, and consequently gained a settlement. And it was likened to the case of a mortgage.— By Ld. *Mansfield* C. J. (unto which the rest of the Court assented:) if the estate on which a pauper resides is substantially his property, this is sufficient whatever form of conveyance there may be; and therefore the *mortgagor in possession gains a settlement*, because the mortgagee, notwithstanding the form, has but a chattel, and the mortgage is only a security. It is an affront to common sense to say the mortgagor is not the real owner. But here, what interest had the pauper in this estate? He made an immediate conveyance to trustees, not a mortgage, to sell and pay off two mortgages and other debts; and when this conveyance was made, it was so doubtful whether there would be any surplus, that the deed says, he shall have the surplus, *if any.* He had only a chance of a residue, and had not a right to continue a moment in possession. A mortgagor has a right to the possession, till the mortgagee brings an ejectment. After the mortgagee has got into possession, he (the mortgagee) might gain a settlement. There is still another and a stronger ground, in this case; for the possession was gained by fraud.

So also a mortgagee in possession.

Note. In a subsequent case of *Rex* v. *Edington*, (*post*, 631.) this case was cited, and the Court said, that the main point upon which the decision in this case was made, was the fact of fraudulent possession.

Mortgagor living on the

Rex v. *Catherington, T.* 30 *Geo.* 3. 3 *T. R.* 771. 2 *Bott*, 489.

2 *Nol. P. L.* 85. 98. *William Booker* and his wife and family were removed from *Compton* to *Catherington*. The sessions confirmed the order, subject to the opinion of the Court, on a case stating, That the pauper had a settlement in *Catherington* prior to *Michaelmas*, 1789, and was entitled to the equity of redemption of a freehold estate in *Compton*, consisting of several dwelling-houses of the annual value of 13*l*. 5*s*. which had been mortgaged by his father to *Eliz. Morey*, which mortgage was afterwards assigned to one *Ayles*. In *Michaelmas* term, 1788, *Ayles* delivered declarations in ejectment to the pauper as landlord, and to the several tenants in possession of the estate in *Compton*, and thereupon the tenants attorned to *Ayles*. About *Michaelmas*, 1789, the pauper asked permission of Mr. *Newland*, the agent for *Ayles*, to inhabit one of the houses, part of the mortgaged estate, and which was then untenanted, *for the purpose of overlooking some repairs*, which he proposed to do upon the estate, with an intent to sell the same, and pay the mortgage money; in consequence of which he inhabited one of the houses upwards of three months, when he was removed by the present order. He did nothing towards the repair of the houses or sale of the estate. No agreement was made between him and Mr. *Newland* with respect to any rent to be paid for such house.—Ld. *Kenyon* C. J. It has been long established that an equitable title is sufficient to give a settlement; but in the case alluded to, the mortgagor was in possession. So, by the act for regulating votes of county elections, either the mortgagor or mortgagee in possession may vote. But in this case the party had neither *jus in re*, nor *ad rem*.— *Buller* J. In the case of *St. Michael's, Bath, ante*, p. 630. it was said, that either a mortgagor or mortgagee might gain settlement *according to circumstances; one* of these circumstances is *possession;* and upon possession all the questions have turned. Both orders confirmed.

Residence by a mortgagor.

premises mortgaged, but not in possession as owner, gains no settlement.

Equitable title sufficient to give a settlement.

Rex v. *Edington, H.* 41 *Geo.* 3. 1 *East*, 288. 2 *Bott*, 496. 2 *Nol. P. L.* 85. Removal from *Edington* to *Urchfont*, and quashed by the sessions. Case: *M. M.* being in possession of a cottage in *Edington*, granted to one *C. W.* for ninety-nine years determinable on three lives, purchased a reversionary interest in the same for a further term of ninety-nine years, to commence at the determination of the first term, but determinable with the lives of herself and her brother *H. M.* Having married one *W. D.* the premises were assigned by deed, to which she and *W. D.* were parties on one side, and *J. P.* of *E.* on the other, to the said *J. P.* as trustee for the parishioners of *E.* for the payment of 10*l*. and interest, in trust that the said *J. P.* should by sale and mortgage of the said premises, and by the receipt of the rent and profits thereof, or by some or one of those ways raise the said sum, &c. together with costs and charges; and after payment of the said sum of 10*l*., &c. in trust to re-assign. *W. D.* died, leaving *M. D.* his widow, who afterwards married the pauper *W. B.*, then settled in *U.* She and the first husband in his lifetime (and after his death and her second marriage, and also after the death of the surviving life named in the first lease, she with the pauper her second husband, for the space of four years) occupied to the time of her death, and the pauper continued to pay the lord his quit-rent during his possession, and at different times repaired the premises; but it did not appear whether the lord had any

If a cottage be leased for years determinable on lives, and be conveyed by a woman and her husband in trust to raise money by sale or mortgage, with a clause for re-assignment, and the parties continue in possession and the husband die, and the wife marry a second husband, she retaining possession, he will gain a settlement by forty days' residence, though the money do not appear to have been paid.

Residence by a mortgagor.

R. v. Edington.

knowledge of the assignment.— Ld. *Kenyon* C. J. If the estate come to the party by the operation of law, the value is not material. That is the case here: for the purchase was made by the wife before the coverture, and it came to the husband upon his marriage by act of law; and he might, even during the coverture, have sold it without the assent of his wife. But it is objected that the interest is not sufficient for the purpose of a settlement on account of the antecedent conveyance to *Price* the trustee. But this conveyance is equivalent to a mortgage and no more. Here is an express clause for a conveyance. Then this must be governed by the same rules as a mortgage.—*Grose* J. I cannot distinguish this from the case of a mortgage. The purpose of the conveyance was to secure the money; the parties interested continued afterwards in possession; the pauper paid the quit-rents, and repaired the premises. Now, what more could a mortgagor in possession do?—*Lawrence* J. said, It cannot be disputed that a conveyance to a trustee in trust by sale, or mortgage, and recept of the rents and profits to raise 10*l.* is merely a security for that sum, and it is plain that the parties themselves so considered it, by providing for a re-assignment of all, or so much as should not be sold, applied or otherwise disposed of. In the case of *Rex* v. *St. Michael's, Bath*, Ld. *Mansfield* begins by saying that which is decisive as applied to this; "If the estate on which a pauper resides is *substantially* his property, that is sufficient, *whatever forms of conveyance there may be.*" And therefore, he says, that a mortgagor in possession gains a settlement, "because the mortgagee, notwithstanding the form has but a chattel, and the mortgage is only a security." If then, the object be merely to secure money, whether the conveyance be in the form of a trust like the present, or of a mortgage, it is in substance the same thing.

(2.) As to Estates by purchase; and herein,

(*a*) *Of the consideration paid; and of mortgages.*
(*b*) *Of residence by a mortgagee.*
(*c*) *Of money laid out on the premises.*

(2. *a*) Of the Consideration paid; and of Mortgages.

9 G. 1. c. 7. Purchase under 30*l.*

By stat. 9 *Geo.* 1. c. 7. § 5. *After* March 25. 1723, *no person or persons shall be deemed, adjudged, or taken, to acquire or gain any settlement in any parish or place, for or by virtue of any purchase of any estate or interest in such parish or place, whereof the consideration for such purchase doth not amount to the sum of* 30*l.* bonâ fide *paid, for any longer or further time than such person or persons shall inhabit in such estate, and shall then be liable to be removed to such parish or place where such person or persons were last legally settled, before the said purchase and inhabitancy therein.*

Children residing with their father upon a tenement purchased by him for less than 30*l.*, gain

No person.] And as this shall not settle the person purchasing for longer time than he continues in the purchased estate, so it shall not settle any of his children, by any derivative settlement from him. As in the case of *Rex* v. *Salford*, *H.* 4 *Geo.* 3. *Burr. S. C.* 516. 1 *Blac. Rep.* 433. *Peter White* the younger and *Mary* his wife were removed from *Salford* to *Over-Nor-*

ton, as likely to become chargeable to *Salford*, and as being last legally settled in *Over-Norton*. On appeal, the sessions discharge this order, and state specially, That *Peter White*, the pauper's father, being settled in *Over-Norton*, in the year 1726, for the consideration of 29*l*., purchased a tenement in the parish of *Salford*. His son the pauper was born there in the year 1730, and lived with his father therein till about 1754, when he married and left his father's family, and lived in a separate tenement at *Salford*, without having gained any settlement, but what he derived from his father.—Ld. *Mansfield* C. J. delivered the resolution of the Court: The question is, whether the pauper ought to have remained in the parish of *Salford*, or have been removed from thence to the hamlet of *Over-Norton* as his last legal settlement? And we are of opinion, that no settlement of the father was gained in *Salford* by the purchase, but only during the time of his inhabiting in the purchased premises. And this would have been equally the case, if the act had never been made: For he could not have been removed from his own estate, though he had no settlement in the parish where it lay. So that the father's settlement (if it may be so called) in *Salford* was only temporary, and did not extinguish his settlement at *Over-Norton*. And the only settlement which the son could derive from his father was at *Over-Norton*; for there could be no derivative settlement from the father at *Salford*, the father himself having no settlement there, but being only irremoveable from his own estate. And this may be illustrated by a supposition, that the son had not resided in *Salford*, but had gone to live in a third parish, and had there been likely to become chargeable: and the question had arisen, whether he ought to be removed to *Salford* or *Over-Norton*? He could not possibly in such case have been removed to *Salford*, because such removal would have been conclusive upon *Salford*, and he would remain settled there for ever; consequently, he must have been removed to *Over-Norton*. Which shews, that he can have acquired no settlement in *Salford*, by virtue of his father's purchase, even during the time of his father's residence upon it.

Estate purchased for less than 30l. surrendered to a son.

no settlement by such residence.

Purchase.] *Rex* v. *Sawbridgeworth*, *H.* 3 *Geo.* 2. 2 *Sess. Ca.* 131. 1 *Barnard.* 297. *Burr. S. C.* 56. 2 *Bott*, 489. *n.* 2 *Nol. P. L.* 74. *Edward Sheppard* the pauper was born at *Sawbridgeworth*: and his father being seized in fee of a copyhold cottage in *Aldbury*, which used to be let at 25*s*. a-year, did about a year and a half before the removal, surrender the said copyhold cottage to his said son *Edward Sheppard* and his heirs, who were thereupon admitted and lived upon the same about a year and a half, and then sold the same for 14*l*. 2*s*. 6*d*. being the full value thereof. The two justices, and also the sessions, were of opinion, that this gained no settlement, being not such a purchase as the act intended for 30*l*. *bonâ fide* paid. It was moved to quash the order of the justices; for that this estate in *Aldbury* was the pauper's own by a surrender from his father, and there was no difference between a surrender from a father and a descent. But the Court denied the motion, without so much as making a rule to shew cause. For they not only thought that the surrender looked fraudulent, but they said that the intent of the statute was, to prevent persons gaining settlements who were any ways likely to be

Father surrenders a copyhold tenement under 30*l*. value to his son, the son gains no settlement by residing thereon.

Conveyance in consideration of natural affection.

chargeable, and therefore provided that they should be able to lay out 30*l.* in a purchase. And both the orders were confirmed.

A conveyance from a father to his daughter in consideration of natural love and affection, without any pecuniary consideration being paid, is sufficient to gain her husband a settlement.

But in *Rex* v. *Marwood, H.* 29 *Geo.* 2. *Burr. S. C.* 386. 2 *Bott,* 464. 2 *Nol. P. L.* 74. 80. On a motion to quash an order of two justices, and an order of sessions confirming the same, for the removal of *Thomas Connibear* and *Mary* his wife from *Kentisbury* to *Marwood.* The Case was: The said *Mary* had conveyed to her by her father, in consideration of natural love and affection, a cottage, garden, and plat of ground at *Kentisbury,* for the residue of a term of ninety-nine years then determinable on the death of one *Joan Slocombe,* the consideration of which purchase originally, in the year 1689, amounted only to 20*s.* *Mary* and her husband entered upon the premises, and continued thereon for several years, until the lease determined by the death of the said *Joan.* Upon which they were removed from *Kentisbury* to *Marwood.*—*Ryder* C.J. If I had any doubt I would not give an opinion now. This is not a 'purchase' within the meaning of the act. The word purchase is not to be taken in the largest extent of it, but is confined to cases where a pecuniary consideration is paid. Otherwise, no devise, or gift, or settlement on marriage, would gain a settlement, unless there were a pecuniary consideration paid. The intention of the act was, to prevent settlements by purchases for small money considerations. In the present case the husband is not to be considered as a purchaser, and therefore he acquired a settlement in *Kentisbury.* And by the Court unanimously, the orders of the justices were quashed.

And in *Rex* v. *Ingleton, E.* 6 *Geo.* 3. *Burr. S. C.* 560. 2 *Bott,* 470. 2 *Nol. P. L.* 74. 187. *Richard Speddy* and *Rose* his wife, residing under a certificate at *Astwick,* the father of the said *Rose* conveyed to her, in consideration of natural love and affection, a customary cottage at *Astwick,* to the use of herself for life, and after her decease to the use of *Jane* her daughter and her heirs. The said *Richard* and *Rose* his wife entered upon and continued in possession of the cottage for sixteen years, and then purchased of their daughter *Jane* her remainder in fee of the premises for 5*l.* and afterwards sold the whole for twenty guineas. Afterwards, the said *Richard Speddy* and *Rose* his wife, becoming actually chargeable, were removed by order of two justices to *Ingleton,* which gave the certificate. And the sessions being of opinion that the said *Richard* and his wife gained no settlement in *Astwick,* confirmed that order. It was moved to quash these orders. And on shewing cause, they were given up by the counsel as indefensible, on the authority of the case of *Rex* v. *Marwood;* this being a voluntary settlement, and not a purchase within the intent of the statute.

A conveyance from father to son in consideration of natural love and affection, and of 10*l.* gains a settlement, when the real value of the estate is more than 10*l.*

Rex v. *Ufton, E.* 29 *Geo.* 3. 3 *T. R.* 251. 2 *Bott,* 488. 2 *Nol. P. L.* 75. 77. *John Henwood* and his family were removed from *Ufton* to *Mortimer.* The sessions quashed the order, subject to the opinion of the Court on the following Case: That the pauper was originally settled at *Ufton,* and came to reside with his father about twenty-three years ago on a cottage and premises at *Mortimer,* which in *October,* 1766, the father duly conveyed to him in fee, *in consideration of natural love and affection, and of* 10*l. to him paid* by the pauper. About three years after the pauper obtained a certificate from *Ufton,* dated 1st *January,*

Grant by the lord of a manor.

R. v. Ufton.

1770, and afterwards occasionally received relief from *Ufton* during his residence in the cottage at *Mortimer;* his father lived with him on the premises until his death about eight years ago. The pauper was his eldest son and heir at law, and continued to reside upon the premises until 1788, when he sold the same for 50*l.*, and returned to *Ufton.*—By the Court: This conveyance was in consideration *of natural love and affection* as well as 10*l.*, and we cannot suppose that 10*l.* was the real value of the estate, for there are circumstances to shew the contrary, having been afterwards sold for 50*l.* This being a donation from a father to a son, is clearly not a purchase within 9 *Geo.* 1. *c.* 7. notwithstanding part of the consideration was in money. And though the certificate was conclusive at the time, it was afterwards done away by the pauper's residence on his own property at *Mortimer.* Order of sessions reversed.

A grant of waste land by a lord of a manor under 30*l.* value, the fine being 1*s.*, heriot 1*s.*, and quit-rent 1*s.*, will not give a settlement.

Rex v. *Warblington*, *E.* 26 *Geo.* 3. 1 *T. R.* 241. 2 *Bott*, 483. 2 *Nol. P. L.* 75. 77, 78. 92. 109. Removal from *Havant* to *Warblington.* The sessions confirmed the order, and stated the following Case: That *William Bridger*, father of the pauper, came to *Havant* with a certificate from *Warblington:* That *John Moody*, Esq. lord of the manor of *Havant*, by copy of court-roll, granted to the said *William* and his heirs, one parcel of waste ground called the *Gravel Pit;* and which did not appear ever to have been granted before. *William* built a house thereon, and lived therein for several years as owner thereof; he afterwards borrowed 100*l.* of *Mary Roper*, and surrendered the premises for securing the same; and on the money not being paid, she was admitted. She afterwards sold her interest to *John Hammond*, who was thereupon admitted. After the death of *William Bridger*, his heir at law sold his equity of redemption to said *Hammond* for 20*l.* 17*s.* and surrendered the same accordingly. It appeared by the Court books that *William Bridger* was admitted, on the lord's grant, to one parcel of land called the *Gravel-land*, and in the copy of his admission were these words, "*fine one shilling, heriot one shilling, quit-rent one shilling.*" That *Moody*'s steward proved that Mr. *M.* was used to grant small parcels of the wastes of the said manor for small pecuniary considerations, but he never knew him make such grants without. That the value of the said parcel of land at the time of the said grant did not exceed 30*s.* or 40*s.*, and *William Bridger* was at that time a very poor man. It did not appear whether any pecuniary consideration was given for the said grant, or it was voluntary and without any consideration: it further appeared, that in the margin of all the copies was inserted, "fine 1*s.*"—*Willes* J. said, that the question was, whether this grant was a voluntary grant, or made for a valuable consideration. That the proof lay on the appellants to shew it was a voluntary grant, for it was incumbent upon a certifying parish to get rid of the certificate: that if that could only be done by certificate, it must stand good, for that the Court could not presume one way or the other. But if the Court could presume either way, it must be that this was a purchase. That however small the consideration, they would hold it to be a purchase: that this appeared to be a grant for a small pecuniary consideration, and therefore not a voluntary grant: and being a purchase under 30*l.* did not give a settlement since stat. 9 *Geo.* 1. That the heriot and reserved rent

Grant by the lord of a manor.

R. v. Warblington.

rebutted the presumption, that it was a free gift. — *Ashhurst* J. said that a purchase was the acquisition of something for an equivalent: a *quid pro quo*. And that was so in this case. — *Buller* J. said he reserved to himself the consideration of the question, what effect a voluntary gift would have on a certificated person as to giving a settlement.

Where there is no custom for that purpose the lord of a manor cannot make a new grant of copyhold; and if he does the grantee acquires thereby no settlement by estate. A grant by the lord of copyhold land, paying a yearly rent of 2*s*. 6*d*. (which rent in a subsequent part was called a quit-rent,) is a purchase within 9 G. 1. c. 7. and being under 30*l*. confers no settlement.

Rex v. *Hornchurch*, *M*. 59 *Geo*. 3. 2 *B*. & *A*. 189. 2 *Nol*. *P*. *L*. 109. Removal from *Hornchurch* to *Purleigh*, both in *Essex*. The sessions quashed the order, subject, &c. — Case: By grant dated *May* 13. 1799, *James Thurtell*, the father of the pauper, obtained from the lord of the manor a piece of the waste in the appellant parish, where he built three cottages. The grant was as follows, *viz*. "To this Court came *James Thurtell*, of the parish of *Munden*, in his own proper person, and *Sarah* his wife, and prayed to be admitted tenant to all that piece or parcel of land or ground, being part of the waste land of this manor, containing by estimation about half a rood of waste land, a little more or less, with the cottage or tenement thereon, lately erected or built, paying to the lord the yearly rent of 2*s*. and 6*d*., to whom the lord of the manor by his steward, with the consent of the homage, granted and delivered seisin thereof by the rod; to have and to hold the said piece or parcel of ground and premises, unto the said *James Thurtell* and *Sarah* his wife, and the survivor of them, and to the heirs and assigns of the survivor of them, of the lord of the said manor, at the will of the lord, by the rod, according to the custom of the said manor, (subject to such mortgage or conditional surrender as he the said *James Thurtell* alone, without the consent of his wife, shall make, according to the customs of the said manor, within six months from the date hereof, for securing any sum of money not exceeding the sum of 60*l*. and interest,) at the yearly quit-rent aforesaid, and by suit of court and other customs and services of right, due, and accustomed; and he giveth to the lord for fine for such his admission nothing of the special favour of the lord, and so saving all right of the lord, he is admitted tenant as aforesaid, and his fealty is respited, &c." The sessions were of opinion that this grant did not confer such an estate upon the pauper's father as would give a settlement. — After argument, *Abbott* C. J. said, I think that this grant was not a valid conveyance of the copyhold estate, because there is no custom stated for the lord to make a new grant of copyhold within this manor. Unless that custom exists, there can be no copyhold except where the land has been at all times demised or demisable by copy of court-roll. The lord, therefore, had no right to make this grant. But even if the grant were good, I should still think that this case fell within the 9 *Geo*. 1. *c*. 7., for here the land was originally demised for a mere money consideration, to be paid annually, and the sum stated in the case was a full consideration for all that the lord granted at the time. I cannot distinguish this case from *Rex* v. *Warblington*, *ante*, 635. which must govern our present decision. Then if the case falls within 9 *Geo*. 1. *c*. 7., it is clear that the consideration was less than 30*l*., the sum required by the act.

Grant of a licence to inclose waste and to erect a cottage.

Rex v. *Horndon-on-the-Hill*, *H*. 56 *Geo*. 3. 4 *M*. & *S*. 562. 2 *Nol*. *P*. *L*. 92, 93. Removal from *Orsett* to *Horndon-on-the-Hill*, in the county of *Essex*. Order confirmed, upon appeal to the quarter sessions, subject to the opinion of the Court of K. B. on the following

Grant of licence to inclose waste, &c.

R. v. Horndon-on-the-Hill.

Case: The pauper being legally settled in *Horndon-on-the-Hill*, applied to the lord of the manor of *Orsett* for licence to erect a cottage on the waste lying within the parish of *Orsett*. The court rolls were produced by the steward, containing the following entry: "Manor of *Orsett*, 9th *Nov*. 1805. At a general court baron then held, the lord of the manor granted licence to *Benjamin Brad* to erect a cottage on a piece of land, containing one rood, in the lane leading, &c. rendering an annual rent of 10*s*. 6*d*. at *Michaelmas* in every year, as a quit-rent for the same." No other consideration was paid for the same. The pauper accordingly erected a cottage at an expence of more than 30*l*. on the said piece of ground, and some months afterwards applied to the lord for a piece of ground for a garden. As to that the following entry was produced; "24th *March*, 1806. At a special court baron then held, it was certified by the steward, and presented by the homage, that at the then last court the lord of the manor granted licence, &c. (reciting the former entry,) and at this court the lord of the manor granted licence to the said *B. Brad* to inclose a piece of ground for a garden adjoining to the said cottage containing —— roods." No consideration was paid for this last piece of ground, and both were severally parts of the waste of the manor, and their value did not exceed 5*l*. After the building of the cottage the pauper resided on the premises about a year and a half, and then sold them to one *Robinson*, of which the following entry was made in the court rolls: "3d *June*, 1809. At a general court baron then held, after noticing that at a court held 9th *Nov*. 1805, licence was granted, &c. (reciting the grant of the first licence); and that at another court held 24th *March*, 1806, licence was granted, &c. (reciting the grant of the second licence); it was at this court presented by the homage that the said *B. Brad* had erected the cottage, and inclosed the piece of ground, and that he had since sold and disposed of the same unto *Robinson* for the sum of 40*l*., whereby happened to the lord an alienation fine of one guinea, which had been paid." Afterwards *Robinson* sold the premises to *Bonham*, of which the following entry was made: "7th *June*, 1813. At a general court baron then held, the homage presented that since the then last court *Henry Bonham*, Esq. purchased of *Wm. Robinson* a cottage erected on the waste by *B. Brad*, and also a garden adjoining thereto, granted by the lord at courts held 9th *Nov*. 1805, and 24th *March*, 1806, whereby there happened to the lord an alienation fine or relief, which had been paid or compounded for. None of these entries were stamped, and this was the only evidence of title produced. There was no evidence that these two pieces of waste land, or either of them, had ever been demised by copy of court-roll, or that there was within the manor of *Orsett* any custom to create copyholds, or to grant any part of the waste thereof, to hold as in the nature of copyhold. — The case having been argued, Ld. *Ellenborough* C. J. A licence is not a grant, but may be recalled immediately; and so might this licence, the day after it was granted. We cannot take into our consideration what it may be conjectured a court of equity would determine in this case. Perhaps a court of equity might interfere, but can we say with certainty that it would? We ought to see that the party has clearly an equitable interest, and not merely

Grant of licence to inclose waste, &c.

such a claim as might possibly induce a court of equity to interpose in some way or other. This was a mere personal licence, and not, like one of the cases cited, a grant by copy of parcel of the land. (*Rex* v. *Warblington, ante*, 635.) Here the pauper never had a more perfect estate than the licence gave him, that is, a permission to occupy. — *Bayley* J. We cannot know how a court of equity would deal with this case; probably the utmost that it would do would be to grant an injunction if an ejectment was brought. But here is no grant of any interest in land; I cannot say that the pauper took any estate; and therefore this would be a new species of settlement. Order of sessions confirmed.

A. built a house on the waste of a manor by licence from the lord, resided in it two years, and then sold it to *B.* The latter sold it to *C.* for 30*l.*, but no conveyance was executed. *C.* resided in it five years, and paid 1*s.* per annum rent to the lord, and then sold his interest. No adverse claim was made: Held, that although *C.* paid a consideration of 30*l.* when he purchased his interest, he did not acquire by purchase an interest or estate sufficient to confer a settlement within the statute 9 G.1. c.7. § 5.

Rex v. *Inh. of Hagworthingham, E.* 4 *Geo.* 4. 1 *B. & C.* 634. 2 *Nol. P. L.* 93. Upon an appeal against an order of two justices, whereby *E. Turner*, his wife and family, were removed from the parish of *Stainton*, by *Langworth*, in the county of *Lincoln*, to the parish of *Hagworthingham*, in the same county, the sessions confirmed the order, subject to the opinion of this Court on the following Case: In the year 1798 certain commissioners, in pursuance of an act of parliament for the inclosure of the parish of *Hagworthingham*, made their award, and allotted to the Earl of *Manvers*, as the lord of the manor of *Hagworthingham*, an allotment, as a full compensation for his right and interest in the soil of the open fields and commonable and waste lands within the manor. In the year 1809, one *Goodwyn* applied to Lord *Manvers* for leave to build a house upon the waste, in the parish of *Hagworthingham*. Lord *Manvers* gave him liberty, in writing, to build a house on the place in question. *Goodwyn* built there, on the waste by the road side, in the same year, a blacksmith's shop, which two years afterwards he sold to one *Bayley*, who sold it to the pauper for 30*l.* No deed of conveyance was executed to the pauper. The pauper converted the shop into a dwelling-house, where he resided during five years, and then sold it to one *Wright* for 34*l.* The pauper continued to live therein as tenant to *Wright* for two years longer. During the five years that the pauper resided in the house as owner, he paid 1*s.* a-year to Lord *Manvers*, as lord of the manor. The surveyor of the highways once demanded this 1*s.* to be paid to him, but it was never so paid. On the pauper quitting the house, *Wright* went to live there, and it is let by *Wright* to a tenant for 2*l.* 18*s.* a-year at the present time. No adverse claim has ever been made. The case having been argued, *Cur. adv. vult.* — Afterwards, *Abbott* C. J. delivered judgment. We have considered of this case, and we are of opinion, that the pauper had not gained a settlement in *Hagworthingham*, and, consequently, that the rule for quashing the orders must be made absolute. In support of the orders it was contended, that this was a settlement obtained by purchase of an estate or interest in the parish, for a consideration of 30*l.* paid. Some discussion arose as to the nature of the estate or interest by the purchase whereof a settlement may be acquired. But we think the enquiry into that point unnecessary in this case; because, upon the facts stated, and on the authority of the case of *Rex* v. *Horndon-on-the-Hill*, (4 *M. & S.* 562.), we think there has been no purchase of any estate or interest of which we can take notice. It is stated in the case, that the pauper, after his purchase, paid 1*s.* a-year to Lord

Manvers; but no such payment appears to have been made, either by *Bayley*, who sold to the pauper, or by *Goodwyn*, who erected the building and sold it to *Bayley*. Therefore, although the pauper might, in consequence of this payment, have acquired the character of a tenant from year to year, yet there is nothing to give that character either to *Bayley* or *Goodwyn*, and the matter purchased by the pauper is the same as in the case referred to. It was there decided, that a licence to occupy does not operate as a grant, nor confer any legal title; and as to equitable right or title, the observations made by Lord *Ellenborough* are unanswerable: "We cannot take into our consideration what it may be conjectured a court of equity would determine in this case. Perhaps a court of equity might interfere, but can we say with certainty that it would? We ought to see that the party has clearly an equitable interest, and not merely such a claim as might possibly induce a court of equity to interpose in some way or other." Upon the ground, therefore, that this was not a purchase of any estate or interest in the land or building, we are of opinion that no settlement was gained. Order of sessions quashed.

Grant of licence to inclose waste, &c.

R. v. Hagworthingham.

Rex v. *Martley*, *E.* 44 *Geo.* 3. 5 *East*, 40. 2 *Bott*, 501. 2 *Nol. P. L.* 110. Removal from *Doddenham* to *Martley*, and confirmed by the sessions. — Case: On the 25th of *Nov.* 1754, the dean and chapter of *Worcester* granted to *H. B.* the grandfather of the pauper, to him, his heirs and assigns, a lease of a cottage and garden, for his own life, that of his son *Thomas*, and that of his daughter *Susanna*, at the yearly rent of 2*s.* 6*d.* At his death, leaving no will, he was succeeded in possession by his son *William*, (the pauper's father,) who afterwards died leaving a will, devising the premises to his wife for life, remainder to *W. B.* the pauper. The pauper came at the end of two years to reside with his mother on the premises, till he married (*Feb.* 2, 1790), when she demised to him the premises at a yearly rent, and went to reside elsewhere, leaving the pauper in the sole occupation. On the 27th *Aug.* 1795, *T.B.*, the second life, died. On the 13th of *July*, 1798, the mother of the pauper, who was tenant for life under the will of the pauper's father, died. The pauper continued in possession till *Nov.* 26th, when on payment of a fine of two guineas, a new lease was granted to the pauper at a new rent of 1*s.*, to hold to him, his heirs and assigns, for three new lives, still existing. At this time the lives in the first lease were all extinct. The pauper's residence on the premises continued till the time of the removal. — Ld. *Ellenborough* C. J. said, that there would be no difficulty in deciding that this was a purchase under 30*l.* within the statute: but he asked, how, admitting that and presuming the third life under the first lease to be extinct (she not having been heard of for 30 years), this order removing the pauper *from his own estate* could be supported? To this it was answered, that where a man applies for relief, he must be taken to consent to all things necessary to afford him that relief in the due course of law, and consequently to an order of removal to his last legal settlement. But the Court held that such a person was altogether irremoveable whilst he resided on his own estate.

A person resident on an estate granted him for lives in consideration of 2*l.* 2*s.* fine and 1*s.* rent, cannot be removed therefrom though he have applied for relief, and is thereby actually chargeable. But it is an estate within stat. 9 G. 1. under 30*l.* consideration.

Part of the purchase money borrowed on mortgage.

A purchase of 30*l.* part of which was paid by the parish officers of another parish, is not taken to be fraudulent unless so stated.

The sum of 30*l.* bonâ fide *paid.*] *St. Paul's Warden* v. *Kempton, E.* 13 *Geo.* 1. *Fol.* 238. 2 *Bott.* 504. 2 *Nol. P. L.* 111. There was a special order stated at sessions. A person purchased a copyhold tenement in *St. Paul's Warden*, which, with the fine and fees paid to the Court, amounted to 30*l.*; and it appeared by the same order, that the officers of the parish of *Kempton* had given him 40*s.* towards paying his fine and fees. Therefore it was insisted, that this was fraudulent, and not a good purchase within the statute, sufficient to gain a settlement. But by the whole Court: We cannot take notice of its being fraudulent, unless the justices had adjudged it so. And the order was confirmed.

Purchase for 39*l.* though 30*l.* thereof was borrowed on mortgage of the premises, gains a settlement.

Rex v. *Tedford, T.* 8 & 9 *Geo.* 2. *Burr. S. C.* 57. 2 *Bott,* 505. 2 *Nol. P. L.* 112. Removal from *Waddingham* to *Tedford.* Upon appeal the sessions stated specially a case to be laid before the judge of assize; *viz.* That *Francis Gill* was settled at *Tedford*, and contracted with *John Atkinson* for a house and curtilage in *Waddingham* for 39*l.* which was conveyed to *Gill* and his heirs accordingly, in consideration of 39*l.* *Gill* paid 9*l.* and *Isaac Bristol* paid the remaining 30*l.* to *Atkinson* by *Gill's* order. Conveyance dated *May* 2. 1730, executed *May* 19. 1730. *June* 18. 1730, *Gill* mortgaged the premises to the said *Isaac Bristol. Gill* continued in possession about four years after the mortgage. Then *Bristol* entered, by virtue of the said mortgage *and release of the equity of redemption.* Then the inhabitants of *Waddingham* procured *Gill*, being out of possession, to be removed to *Tedford.* The order of sessions recites, that whereas the judges of assize had not time to hear and determine it, and whereas the parties agreed this to be the true state of the case; therefore, upon hearing counsel and further evidence on both sides, this Court doth declare and adjudge, that the purchase made by *Gill* was fraudulent, and that the settlement of *Francis Gill* is at *Tedford;* but that the parishioners of *Tedford* are no ways concerned in the said fraud.—It was moved to quash these orders; and urged, that the justices in their adjudication depart from their premises; for the act doth not extend to any case where the consideration exceeds 30*l.* But here the consideration is above 30*l.* And it appears to have been *bonâ fide* paid by *Gill;* part by himself, and part by his order (though by the hands of *Bristol*). It doth not even appear that *Bristol* had lent it to him: therefore it shall be taken that it was *Gill's* own money. And no circumstances of fraud are stated: And therefore if this conclusion of the justices at sessions be drawn from the premises stated, it is a conclusion contrary both to the law and to the fact: and the Court will themselves judge of it and set it right.—On the other side it was argued, Whether the sum paid as consideration money was greater or less, if there be fraud, it poisons the whole. The justices are the proper judges of fraud; and they have adjudged that it was a fraudulent purchase. And it appears upon the face of the case, as stated for the judge of assize, that it was so. But that is not all: They are not confined to this state of the facts. For they heard further evidence on both sides, before they adjudged the purchase to be fraudulent.—By Ld. *Hardwicke* C. J. It must be further evidence of the same fact. For the

Justices to judge of fraud.

state of the case made for the judge of assize was before agreed between the parties to be the true state of it. This case doth not appear to be within the act; for the act is confined to purchases under 30*l.* *bonâ fide* paid. Now in the present case, the consideration was 39*l.* and was *bonâ fide* paid to the vendor. And it would be pretty hard to say, that the justices had a power upon this act to enquire, *Whether or no the purchaser borrowed the money?* It is a common case to borrow money to make up the price. And as to the fraud, it is true that the justices are the proper judges of fraud. But fraud is a fact which must be found. It must be so by a jury upon a special verdict. The residing four years is a very material circumstance in this case: It is frequent for persons to purchase, having no ready money to do so. It does not appear how much or that any of the purchase-money was borrowed. The justices are judges of the fact; and they may judge of the fraud arising from the fact. If they had generally found the fraud, we might have been bound by such general finding: But when they state the facts particularly, the matter is as much open for our determination upon it, as it was for theirs. And the whole Court was of opinion, that from the facts stated, here was no sufficient evidence of fraud. And both the orders were quashed.

Part of the purchase money borrowed on mortgage.

R. v. Tedford.

Purchase of a cottage for 60*l.* which was then mortgaged for 50*l.* and payment afterwards of that 50*l.* by means of borrowing the same, will gain a settlement, though the estate be mortgaged for the 50*l.* the same day.

Rex v. *Chailey*, *T.* 36 *Geo.* 3. 6 *T. R.* 755. 2 *Bott*, 512. 2 *Nol. P.L.* 111. *W. Shaw* and his wife and children were removed from *Chailey* to *Newick* in *Sussex.* The sessions quashed the order, and stated the following Case: — In *November*, 1786, *Shaw* being settled at *Newick*, agreed to purchase a copyhold messuage in *Chailey*, of *R. Hale*, by whom it had been before mortgaged to *R. Coppard* to secure the sum of 50*l.*, and to pay for *Hale*'s interest therein the sum of 10*l.* In pursuance of this agreement the pauper paid to *Hale* 10*l.*, who, on the 4th *November*, 1786, surrendered the premises to the pauper, subject to the conditional surrender before made by *Hale* to *Coppard* for securing 50*l.* to *Coppard.* — In *May*, 1790, the pauper agreed with *J. Heath* to borrow of him 50*l.* on security of the said estate, in order to pay off the mortgage to *Coppard*; and on the 8th *May* the conditional surrender to *Coppard* was duly discharged in the court rolls by a warrant under the hand of *Coppard*, acknowledging having received the 50*l.* of the pauper, and all interest due thereon. On the same 8th of *May* the pauper made a conditional surrender of the premises to *Heath*, for securing the re-payment of 50*l.* which *Heath* had advanced to discharge the mortgage to *Coppard.* On the 4th *November*, 1795, the pauper sold the said estate for 80*l.* being 30*l.* beyond the amount of the mortgage The pauper resided in the cottage from the time of his purchase until the re-sale. — In support of the order of sessions, the above case of *Rex* v. *Tedford* was relied on as in point: inasmuch as by that case it was held to be immaterial whether the purchase-money was borrowed or not. — On the other side it was contended, that nothing was purchased by the pauper but the interest in the land subject to the mortgage, for which the pauper paid 10*l.*, that the subsequent transaction was only a transfer of the mortgage from the first to the second mortgagee; that the pauper himself never had the whole estate; that the original purchase was only for 10*l.*: that the remain-

Part of the purchase money borrowed on mortgage.

R. v. Chailey.

ing interest was then in the mortgagee, not in the seller; that the very instant that the former mortgage was discharged, the interest passed to the second mortgagee, whereas in *Rex* v. *Tedford*, the legal estate was in the purchaser for a month before he mortgaged it: and the (following) case of *Rex* v. *Mattingley* was cited as in point. — By Ld. *Kenyon* C. J. I am not able to distinguish this case from that of *Rex* v. *Tedford*. By 9 *Geo.* 1. *c.* 7. no settlement can be gained by residing on a tenement that is purchased for less than 30*l.*; but it was decided in that case, that though the party cannot pay the money out of his own fund, if he can borrow it on credit, that is sufficient to satisfy the words of the statute. It has been argued, that this was only an assignment of the original mortgage from the first to the second mortgagee, and that the mortgage interest never was in the pauper: and to be sure if that interest never were in the pauper, it would be difficult to say that it conferred a settlement on him. Then it was said, that though the mortgage interest did pass through the pauper, it was merely the mode of transferring a copyhold interest from one person to another, and that this interest did not vest in the pauper; but the latter part of the proposition is not true; the estate did not pass immediately from the first to the second mortgagee; there was an interval, though a short one, in which the estate was vested in the pauper, and he conveyed it to the second mortgagee. An attempt, however, was made to distinguish this case from that of *Rex* v. *Tedford*, by saying that there the legal estate was in the pauper for a longer period than in the present case, but that cannot furnish any real ground of distinction. If this had been a freehold estate, every judgment signed against the pauper, and properly docketed, would have attached on this estate; although when I first read this case, I hesitated whether this could confer a settlement on the pauper, yet on consideration I think it is more safe to support the decision of *Rex* v. *Tedford*, from which I think this cannot fairly be distinguished, and which has been adopted in subsequent cases, than to introduce nice and artificial distinctions. Therefore the order of sessions quashing the original order must be affirmed.

Purchase for 39*l.* 17*s.* 6*d.* the premises being then mortgaged for 32*l.* which was never paid, is a purchase only for 7*l.* 17*s.* 6*d.* *bonâ fide* paid, and gains no settlement.

Rex v. *Mattingley*, *T.* 27 *Geo.* 3. 2 *T. R.* 12. 2 *Bott*, 508. 2 *Nol. P. L.* 114. Removal from *Mattingley* to *Heckfield*. The sessions quashed the order, subject to the opinion of the Court of K. B. on the following Case: — On 18th *June*, 1769, the pauper came to *Mattingley* with a certificate of that date from *Heckfield*, and continued to live at *Mattingley* until the time of the removal. Whilst the pauper continued so to reside, and previous to the 3d of *August*, 1780, he contracted with *John Ironmonger* for the purchase of a copyhold tenement at *Mattingley*, which had been, previously to such contract, mortgaged to one *T. Bailey* for 32*l.* which money was unpaid at the time of making the contract; which contract was, that the pauper should pay 39*l.* 17*s.* 6*d.* for the said tenement, which sum was inclusive of the 32*l.* due on the said mortgage, and the pauper paid to *Ironmonger* 7*l.* 17*s.* 6*d.* which, with 32*l.* to be paid to *Bailey*, made the aforesaid sum of 39*l.* 17*s.* 6*d.* On the 3d *August*, 1780, the pauper was admitted to the said premises on the surrender of *Ironmonger*, subject to a mortgage surrender for the 32*l.* to *Bailey*, and the pauper after-

wards entered into possession of the premises, and continued possessed thereof for four years, during which he paid to the said *Bailey* two years' interest, which was all the interest *Bailey* received after the purchase. He never paid off the said mortgage money: and in the year 1784, he delivered up the possession of the said premises to the said *Bailey.* — The Court said the only question was, Whether the purchase made by the pauper was in fact of the value of 30*l.* *bonâ fide* paid? It is not even pretended that the sum of 30*l.* has been paid at all, but on the contrary no more than 7*l.* 17*s.* 6*d.*; for the pauper only purchased the interest of the mortgagor subject to the mortgage. Now the estate was mortgaged for 32*l.* therefore the mortgagor's interest subject to that was only 7*l.* 17*s.* 6*d.* which was the whole of the pauper's purchase. The estate having been mortgaged for 32*l.* the instant the mortgagee got into possession, he might have gained a settlement upon it; if so, the mortgagee was a purchaser for 32*l.* and the pauper only purchased subject to that charge; had the purchase money been *bonâ fide* paid, the Court would not have enquired how the purchaser came by the money, nor whether he mortgaged the estate for the payment of it: that might be a question of fraud for the consideration of the sessions: but in order to constitute a purchase within 9 *Geo.* 1. the sum of 30*l.* must not only be paid in point of fact, but must be also *bonâ fide* paid. — Order of sessions quashed.

Part of purchase money, borrowed on mortgage.

R. v. Mattingley.

Rex v. *Olney*, *E.* 53 *Geo.* 3. 1 *M.* & *S.* 387. *Bott*, *Cont.* 172. 2 *Nol. P. L.* 114. The sessions for the county of *Buckingham* discharged an order for the removal of *Richard Mayes* from *Olney*, in the said county, to *Earls Barton*, in the county of *Northampton*, subject, &c. — Case. The respondents proved the pauper settled at *Earls Barton* by a certificate, dated the 25th of *July*, 1788, and directed to the parish of *Olney*, acknowledging him to be then a legally settled inhabitant of the parish of *Earl's Barton*. In order to shew a subsequent settlement, the appellants proved that whilst the pauper was residing in the parish of *Olney* under the said certificate, in or about the month of *September*, 1800, and some time prior to the execution of the deed of feoffment hereinafter mentioned, he agreed with one *Michael Hinde*, that he, the pauper, would purchase a messuage belonging to *Hinde*, situate in *Olney*, at the sum of 52*l.*, if *Hinde* would allow 40*l.*, part of the said 52*l.*, to remain upon mortgage, to which *Hinde* consented; and in pursuance thereof, by a deed of feoffment, bearing date the 8th of *October*, 1800, *Hinde*, in consideration of the sum of 52*l.*, therein mentioned to be paid by the pauper, conveyed to him (the pauper) the said messuage in fee; and upon the deed of feoffment there was indorsed a receipt for the consideration money of 52*l.*, but in fact only 12*l.* were paid to *Hinde*, and the remaining sum of 40*l.* was secured to him by deed of mortgage, bearing date the 9th of *October*, 1800, by which the pauper, pursuant to the agreement before mentioned, demised the said messuage to *Hinde*, for a term of 1000 years, in consideration of the sum of 40*l.* in the deed of mortgage mentioned to have been paid by *Hinde* to the pauper; and there was a proviso for the deed's becoming void upon payment by the pauper, his heirs, executors, or administrators, to *Hinde*, his executors, administrators, or assigns, of the sum of

Where the pauper purchased a messuage for 52*l.*, 40*l.* of which was secured by mortgage of the messuage to the vendor; and the pauper afterwards sold the messuage for 60*l.* to another who paid the 40*l.* to the original vendor, and 20*l.* to the pauper, and the pauper quitted the messuage within forty days after the payment of the 40*l.* to the original vendor: Held that he gained no settlement by residence on such estate.

Part of purchase money, borrowed on mortgage.

R. v. Olney.

40*l.*, with lawful interest upon the 9th of *April* then next ensuing. The feoffment and deed of mortgage were both executed at the same time, and remained, together with the title-deeds, in the custody of *Hinde*. The pauper immediately entered into possession of the messuage, and continued to reside therein, and paid the interest upon the said sum of 40*l.* to *Hinde*, until the execution of the deeds hereinafter mentioned; but, during such time, never had the ability to pay off the principal. About a month before the 12th of *June*, 1812, the pauper agreed with one *Thomas Bowden* to sell to him the said messuage, in consideration of the sum of 60*l.*, and soon afterwards *Bowden* paid to *Hinde* the sum of 40*l.* in discharge of his mortgage, and in part of his (*Bowden*'s) purchase-money, and received from *Hinde* the title-deeds, together with the deeds of feoffment and mortgage, which *Hinde* had never delivered up to the pauper. Afterwards by indorsement on the said indenture of mortgage, bearing date the 12th of *June*, 1812, *Hinde*, in consideration of 40*l.* to him therein mentioned to be paid by the pauper, assigned the term of 1000 years to the pauper, and by deeds of lease and release, dated respectively the 12th and 13th of *June*, 1812, the pauper conveyed the messuage to *Bowden* in fee for the consideration of 60*l.*: and 20*l.* being the balance of the purchase-money, were then paid by *Bowden* to the pauper. The indorsement and indentures of lease and release were all executed at the same time. The question for the opinion of the Court is, whether the pauper gained a settlement in the parish of *Olney* by the purchase of the above estate and residence thereon? In support of the order of sessions were cited *Rex* v. *Tedford*, and *Rex* v. *Chailey*. And it was urged that although in *Rex* v. *Chailey* the purchase money was paid immediately, and in the present case not until some years after the purchase, still when ultimately discharged on *June* 12, 1812, it became a *bonâ fide* payment of the whole sum. [*Bayley* J. observed that the pauper did not reside forty days after that time.] *Grose* J. (Ld. *Ellenborough* C. J. *absente*.) The question is, whether this was a purchase for the sum of 30*l.* *bonâ fide* paid, so as to satisfy the stat. 9 *Geo.* 1., where the purchase was contracted for upon security to be given for part of the purchase-money, and such part never paid by the purchaser. The case in substance states, that the premises were mortgaged for 40*l.* of the purchase-money, and that that money was not paid. But I think that the consideration must be *bonâ fide* paid at the time of the purchase in order to satisfy the statute. Then it is clear that this was not a purchase of an estate for 30*l.* paid at the time: the consideration money having remained upon security.—*Le Blanc* J. The 9 *Geo.* 1. enacts, that no person shall gain a settlement by virtue of any purchase of any estate, whereof the consideration doth not amount to 30*l.* *bonâ fide* paid. The question arises on the purchase. The purchase-money amounted to 52*l.*, of which 12*l.* only were paid at the time, the rest was left on mortgage to the vendor. That circumstance distinguishes it from the cases cited, where the party purchasing paid the whole money to the vendor, by borrowing a part *aliunde* so that there he had credit to borrow of others. In *Rex* v. *Mattingley*, (*ante*, 642.) it was held where the purchaser contracted for the purchase of a copyhold estate for 39*l.* which was mortgaged for 32*l.* and paid only 7*l.* and was admitted subject to the mortgage, that it was not

a purchase for 30*l.* *bonâ fide* paid, so as to take it out of the statute. That is a direct authority on this part of the case. But it has been argued upon a supposed difference, inasmuch as the purchase-money was ultimately paid in the subsequent transaction with *Bowden.* But how does that stand? All that was done by *Bowden* when he became the purchaser of the estate, was to pay off the incumbrance in order to get the title-deeds into his hands, which had never passed from the original seller into the hands of the pauper. That was a payment therefore made by *Bowden* for his own benefit, and not on behalf of the pauper. Order of sessions quashed.

More than 30*l. of purchase-money paid, but no conveyance.*

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Rex v. *Inhab. of Geddington, T.* 4 *Geo.* 4. 2 *B.* & *C.* 129. 2 *Nol. P.L.* 102.(*a*) Upon appeal against an order of two justices, whereby *John Garfield,* his wife and children, were removed from the parish of *Geddington,* in the county of *Northampton,* to the parish of *Dunton Bassett,* in the county of *Leicester;* the sessions quashed the order, subject to the opinion of this Court on the following Case: In *November,* 1814, the pauper, *John Garfield,* being then resident in the parish of *Geddington,* entered into a written agreement with one *Richard Nason,* by which the latter agreed to sell to *Garfield* all that messuage, &c. situate at *Dunton Bassett,* in the county of *Leicester,* therein described, at or for the price of 310*l.*, to be paid as follows; the sum of 160*l.* on the 30th day of *November* instant, and the sum of 150*l.* on the 24th *June* next, with interest for the same, after the rate of 5*l.* for 100*l.* for a year from the date of the agreement. And *Nason* agreed at his costs to make out a good marketable title to the premises, and to convey the same at the costs of *Garfield* on the 24th *June* next, on payment of 150*l.* with interest. And *Garfield* agreed with *Nason,* to pay to him on the said 30th *November* instant, the said sum of 160*l.*, and also the further sum of 150*l.* with interest on the said 24th *June* next, on having the premises thereby agreed to be sold conveyed to him, *Garfield.* And on payment of the sum of 160*l.*, *Garfield* was to be let into the possession of the premises; but in case default should be made by him of payment of the 160*l.*, the agreement was to be void, and *Nason* was to be at liberty to sell the premises on the 5th *December* next. The sum of 160*l.* was paid on the day appointed, and full possession then given by *Nason,* and the pauper resided in the house in *Dunton Bassett* for a year and a half, and upwards, immediately subsequent; but he never paid the 150*l.* so agreed to be paid on the 24th *June,* nor was any conveyance ever executed. An action at law was brought by *Nason* for the 150*l.*; but afterwards by an agreement between the parties the same was discontinued; *Nason* paying the costs and returning to the pauper 30*l.* of the said 160*l.*, and the pauper agreeing to give up the contract and the possession, which was accordingly done. — In support of the order of sessions, *Rex* v. *Standon,* 2 *M.* & *S.* 461. *Rex* v. *Toddington,* 1 *B.* & *A.* 560. *Rex* v. *Horndon-on-the-Hill,* 4 *M.* & *S.* 562. *Rex* v. *Hagworthingham,* 1 *B.* & *C.* 634. *Rex* v. *The Inhab. of Martley,* 5 *East,* 40. *Rex* v. *St. John's Glastonbury,* 1 *B.* & *A.* 481., were cited. Contrà. *Wall* v. *Bright,*

A written agreement was made for the purchase of an estate, to be paid for by two instalments; the first payable within a few days after the signing of the agreement, and the last after the expiration of 7 months. The vendor was to make out a good title on the payment of the last instalment, and to convey the premises; but the purchaser was to be let into possession upon the payment of the first instalment. The purchaser paid the first instalment, was let into possession, and continued in possession for a year and a half, but the last instalment was never paid, nor any conveyance ever executed; and he afterwards gave up the contract upon receiving back part of the first instalment. Held, that under this contract, the purchaser did not acquire an

(*a*) See observations on this case, by *A. Amos,* esq. In *Rex* v. *Woolpit, Sitt.* after *Hil.* 5 *Geo.* 4., the Court appeared to hold that a mere inchoate equitable title would not give a settlement; cited 2 *Nol. P. L.* 102. note 2., from *MS.* of *B.* & *C.*

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equitable estate, so as to gain a settlement under the 9 G. 1. c. 7. § 5.

1 *Jac. & Walk.* 494. *Knollys* v. *Shepherd*, cited 1 *Jac. & Walk.* 499. *Payne* v. *Meller*, 6 *Ves.* 349. *Douglas* v. *Whitrong*, 16 *Ves.* 253. *Townley* v. *Bedwell*, 14 *Ves.* 591. [*Holroyd* J. If you shew that the vendor and vendee stood merely in the relation of trustee and *cestui que trust*, then the latter would have an equitable estate, and would gain a settlement. But none of the cases cited shew that a court of equity would, under the circumstances of this case, consider the estate to belong to the vendee as he failed to pay the residue of the purchase-money.] [*Bayley* J. *Rex* v. *Long Bennington* (a) seems to be precisely in point. There the pauper agreed by parol to buy a copyhold for 150*l.* He paid 34*l.* and entered into possession, in part performance of the contract, and continued near six months; the contract was then rescinded, because the seller would not give an indulgence he had promised for the residue of the purchase-money, and the seller returned the pauper 14*l.* The question was, whether this gave a settlement? The sessions thought it did; but this Court held otherwise: for the pauper had purchased no estate or interest in this land; he could have made no claim in equity without paying the remainder of the purchase-money; and though an equitable estate is sufficient to confer a settlement, a questionable right to go into a court of equity is not.] *Rex* v. *Fillongley*, 2 *T. R.* 709. *Rex* v. *Offchurch*, 3 *T. R.* 114. *Rex* v. *Cold Ashton*, *Burr. S. C.* 444. *Rex* v. *Edington*, 1 *East*, 288., were then referred to. — *Bayley* J. In cases relating to the law of settlement, the manner of determining any particular point is not so important, as it is that the decisions should be uniform and consistent. For as that law is administered gratuitously by a most respectable and meritorious body of magistrates, whose habits and duties are not likely to make them acquainted with the nice distinctions of the courts of equity, it is desirable that they should have cases settled upon plain grounds for their direction, rather than that they should be called upon to entertain and decide difficult questions of equitable law. The question in this case arises on the 9 *Geo.* 1. *c.* 7. § 5., by which it is enacted, " that no person shall be deemed to acquire or gain any settlement in any parish, for or by virtue of any purchase of any estate or interest in such parish whereof the consideration for such purchase doth not amount to the sum of 30*l.*, *bonâ fide* paid." There must, therefore, either be an estate or interest PURCHASED; and by the latter word I understand a definite interest, for which the party contracts at the time of making the contract. If the question raised were *res integra*, I should be disposed to hold that the legislature meant a legal interest only. It has been decided, however, that a *cestui que trust* has a sufficient interest in land to gain a settlement under this statute, and I feel bound to adhere to those decisions; but there may be a distinction between an equitable estate and a mere equitable right, and that is adverted to by my Brother *Holroyd*, in the case of *Rex* v. *Toddington*, 1 *B. & A.* 565. The case of *Rex* v. *Long Bennington* is expressly in point with the present, and shews, that in cases of constructive trusts, a settlement is not gained by the *cestui que trust*. The agreement there, indeed, was by parol, but that circumstance formed no ingredient in the judgment of the

(a) *Trin.* 57 G.3. The learned Judge read this case from a manuscript note. See 2 *Nol. P. L.* 100.

Court. The principle of the decision was, that a court of law, perhaps in ignorance of what a court of equity would do under the circumstances, held that it was not the case of a mere naked trustee and a *cestui que trust;* for, until the payment of the full purchase-money, the vendor had a beneficial interest, and was something more than a trustee; and therefore that no settlement was gained. There is one distinction between the two cases. In the case cited it does not appear when the residue of the purchase-money was to be paid; whereas in this case part was paid on the 30th *November*, and the residue was to have been paid on the 24th *June*. And it is said, that during the interval the pauper was irremovable; but I think he was not irremovable till the 24th *June*, because it was not his own estate, either at law or in equity, until he paid or tendered the residue of the purchase-money; and that being so, I am of opinion that there was no settlement gained in *Dunton Bassett*, and, therefore, the order of sessions must be confirmed. — *Holroyd* J. I am of opinion that this was not to be considered the estate of the pauper, either in law or equity, so as to give him a settlement under the contract which is stated in the case. Whether if the vendee had paid or offered to pay the remainder of the purchase-money, an equitable estate would have been gained, so as to give a settlement, is a very different question. The cases which have been cited shew, that where the vendee has performed the contract in part, and has offered to pay the remainder of the purchase-money, the vendor then becomes a trustee for the vendee, and a court of equity will compel a specific performance. The case of *The King* v. *Long Bennington* seems to me to have been properly decided, and to govern the present. There, indeed, the contract was by parol, and it did not appear that the vendee was to have possession for a specific period of time; but these distinctions were not relied upon. Here, time is given till *June*, when the residue of the purchase-money is to be paid; and it is agreed that the vendee should have possession till that time. The effect of which is merely this, that it might or might not amount to a demise for that time; but there is not sufficient found in the case to shew that there was a renting of a tenement of 10*l.* annual value. But it is said, that at all events there was a purchase of an interest for six months; it does not, however, appear how much was to be paid for that, or that the pauper, in purchasing that, acquired an interest in land to the value of 30*l.* If the contract was rescinded by the fault of the vendor, it is questionable whether any thing could be recovered for the possession during the six months. For these reasons I think that no settlement was gained in the parish of *Dunton Bassett*. — *Best* J. It has long been settled that an equitable estate will satisfy the words *any estate or interest* in the 9 *Geo.* 1.; but it must be a clear and absolute equitable estate; such an estate as a court of equity would put the person claiming it into the complete possession of, and protect him against any attempts to disturb his enjoyment of it. A court of equity could not give possession to a purchaser who had not paid the purchase-money, or keep him in possession if he were put in against the legal claim of the vendor. Such a purchaser has only an inchoate right, which is not rendered a perfect equitable estate until he has paid all that he has stipulated to pay. Where purchasers have been

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ready to pay the price, and tendered it to the vendor, cases have occurred in which very nice questions have arisen, whether they are entitled to a conveyance. The business in which we are occupied in this Court does not qualify us for the decision of such points. But if we are incompetent, how much more so must those be who compose the courts of quarter sessions; and these things cannot be submitted to us until they have first been decided upon by them. I say, therefore, with my Brother *Bayley* in the case of the *The King* v. *Horndon-on-the-Hill*, "we cannot know how a court of equity will deal with such a case;" and that I do not see that the pauper had any equitable estate, certainly not such a perfect one as confers a settlement. Order confirmed.

Where the purchase money mentioned in the deeds was 28l. but the sum *bonâ fide* paid was 30l.

Rex v. *Scammonden*, *M.* 30 *Geo.* 3. 3 *T. R.* 474. 2 *Bott*, 510. 2 *Nol. P. L.* 111. Removal from *Scammonden* to *Soyland* both in the West Riding of *Yorkshire*. The sessions discharged the order, subject to the opinion of the Court on the following Case: The pauper being legally settled in *Soyland*, made an agreement with one *Harrison* for the purchase of an estate in *Rishworth* for 28*l.* and the consideration mentioned in the deeds, and in the receipt indorsed, was 28*l.*, but the appellants produced parol evidence to prove, that before the deeds were executed the vendor declared that as the agreement was not in writing he was not bound by it, and having since had 30*l.* offered for the estate, he would not take less, nor would he execute the deeds unless the purchase-money were made up that sum. Upon which the pauper advanced 1*l.* 15*s.* more, which with 5*s.* owing from *Harrison* to the pauper, it was insisted made up the sum of 30*l.* but the deeds were not altered, and the consideration therein mentioned was left according to the original agreement, *viz.* 28*l.* The counsel for the appellants contended that this was a *bonâ fide* purchase for 30*l.* — But the Court were of opinion that no parol evidence could be given to contradict the consideration mentioned in the deeds. The estate purchased was the estate of *Harrison*'s wife; and in the deed there was a covenant from *Harrison* that he and his wife would levy a fine unto *C. Bottomley* in fee, of the premises, at the cost of *Bottomley*; towards the expence of which fine *C. Bottomley* left in the hands of his attorney four guineas. The pauper resided above three months upon the premises, and afterwards sold them to his brother, *J. Bottomley*. To this conveyance *Harrison* and his wife were parties; and it recited *Harrison*'s covenant to the former deed to levy a fine; but as such a fine had not then been levied, it was agreed that instead thereof, *Harrison* and his wife should acknowledge and levy a fine of the premises unto *Bottomley* in fee, which was in *H.* term 1787 levied accordingly; part of the expence whereof was discharged by the four guineas so left in the hands of the attorney by the pauper, and the other part was paid by *Bottomley*. And the sessions being of opinion that the four guineas was to be considered as part of the consideration under the act of parliament, and that *C. Bottomley* by such purchase gained a settlement in *Rishworth*, discharged the order. — Lord *Kenyon* C. J. said, it was clear that the party might prove other considerations than those expressed in the deed. It is permitted in all cases of covenants to stand seised to uses. And in *Filmer* v. *Gott*, 7 *Brown*'s *Parl. Cases*, 70., where the considerations

mentioned in the deed were 10,000*l.* *and natural love and affection*, the lords commissioners of the Great Seal directed an issue to try, whether natural love and affection formed any part of the consideration, the estates being worth near 30,000*l.* On an appeal to the House of Lords this was confirmed; and the jury on the trial of the issue finding that *natural love and affection constituted no part of the consideration*, the deed was afterwards set aside by the Lord Chancellor. — Order of sessions confirmed. R. v. Scammonden.

(*b*) Of Residence by a Mortgagee.

Rex v. *Stockland*, *H.* 15 *Geo.* 2. 2 *Stra.* 1162. *Burr. S. C.* 169. 2 *Bott*, 505. 2 *Nol. P. L.* 111. *John Spiller*, the pauper, was a mortgagee of a term for 15*l.*; and 30*s.* were due to him for interest, and 18*l.* 10*s.* more on bond and simple contract. The mortgagor died. *Spiller* took out administration, as principal creditor; entered and was possessed: and so continued, till removed by the original order. — By the Court: *Spiller* gained a settlement, as a purchaser for a consideration of more than 30*l.* *bonâ fide* paid.

Mortgagee entering as a principal creditor for above 30*l.*, and residing, gains a settlement thereby.

(*c*) Money laid out on the Premises.

Rex v. *Dunchurch*, *H.* 6 *Geo.* 3. *Burr. S. C.* 553. 1 *Blac. Rep.* 596. 2 *Bott*, 506. 2 *Nol. P. L.* 110. *Edward Tansur*, a certificate man from *Dunchurch*, together with his wife *Elizabeth*, were joint purchasers of a house, yard, and garden at *South Kilworth*, and paid for the purchase thereof 19*l.* and upwards. He laid out about 15*l.* more in repairs, and built a new shop on part of the premises; and was taxed after the rate of a tenement of 30*l.* value, and resided in the same till his death. After his death, his widow, the pauper, *Elizabeth*, continued in possession for ten months and more; afterwards sold part of the premises for upwards of 30*l.* and reserved part to herself; but removing out of the same into another house in the same parish, and becoming actually chargeable, she was removed by order of two justices to *Dunchurch* which gave the certificate, and the sessions confirmed that order. It was moved to quash these orders; for that the pauper on this state of the case had gained a settlement at *South Kilworth*. — By the Court: The whole question is, whether this woman was a *bonâ fide* purchaser of an estate of 30*l.* value? She cannot be presumed to have come to it by descent, or executorship, or any such like act of law, because the contrary appears. She and her husband were joint purchasers. They took jointly and by entirety, and not by moieties. If so, she can only stand in the same situation as her husband did; which is that of a purchaser. And as to the value, the act takes it according to the purchase-money actually paid; and no money afterwards laid out, can make the prior purchase of a greater value than it really was at the time of making it. Therefore she gained no settlement by this purchase. And the orders were confirmed.

Laying out money afterwards upon a purchase under 30*l.* will not gain a settlement, even though the money be laid out in the erection of a shop.

(3) That he will not necessarily be settled, though he may not be removeable from his own.

Rex v. *Aythorp Rooding*, *M.* 30 *Geo.* 2. *Burr. S. C.* 412. 2 *Bott*, 465. 2 *Nol. P. L.* 69. 80. 158. *William Gates*, husband

A woman cannot be removed from her hus-

Residence on an estate of the pauper's own, which will not confer a settlement.

band's estate, though he be run away.

of the pauper, *Susannah Gates*, being settled at *White Rooding*, went away and left his wife and children. Whereupon she and her children went and lived for the space of forty days, without her husband, in a copyhold tenement of her husband's at *Aythorpe Rooding*. Two justices remove her to *White Rooding*, as the place of her husband's settlement. The sessions, upon appeal, quash that order. It was moved to quash the order of sessions. — By the Court: There doth not appear any dissent of her husband from her going there, and therefore it is rather to be presumed that she went with his consent. The husband's settlement remains as it was, but nevertheless the wife was not removeable from his estate. It is one thing to say, that a person may not be removed; and another, that such person doth not gain a settlement; (but see *per Fortescue* J., *post*. 651.) The husband himself would not have been removeable from his own if he had gone thither. A man's right to reside upon his own estate is founded on *Magna Charta*, which says that a man shall not be disseised of his freehold. A wife hath a natural right to go and reside upon her husband's estate. If she had gone against her husband's consent, it would have made an alteration. And the Court were unanimous, that the justices could not remove her from her husband's property.

Nor from a leasehold tenement of the husband's.

Rex v. *Leeds, E.* 4 *Geo.* 3. *Burr. S. C.* 524. 1 *Blac. Rep.* 466. 2 *Bott*, 468. 2 *Nol. P. L.* 143. 3*d ed. Joseph Howe*, husband of *Anne Howe* the pauper, took a tenement of 10*l.* a-year at *Blackfordby*, and resided there above forty days. Afterwards he took a tenement at *Leeds* of above 10*l.* a-year, and went and resided there for above forty days, leaving his wife at *Blackfordby*. Then he returned to *Blackfordby*, and stayed with his wife there twenty-seven days. And on his leaving her, and going away to *Leeds*, two justices remove her from *Blackfordby* to *Leeds*, as to her place of settlement. Order confirmed by the sessions. It was agreed, that her settlement must follow that of her husband: but the Court were of opinion, that the justices had no power to remove her from *Blackfordby*, whilst her husband's interest there subsisted. The husband himself could not have been removed from his own tenement at *Blackfordby*, the lease whereof was unexpired. And if they could not have removed the man himself from his own, it follows, that they could not remove his wife so long as it remained his. Both orders quashed.

Not even if the pauper be actually chargeable.

Rex v. *Martley, E.* 44 *Geo.* 3. 5 *East*, 40. 2 *Bott*, 501. 2 *Nol. P. L.* 110. In this case the point in discussion was, whether a pauper residing on an estate, granted to him for three lives, in consideration of two guineas fine, and 1*s.* rent, could be removed from the parish where such dwelling was situated, though he were actually chargeable? It was determined that he could not; and the orders of sessions and of the justices were both quashed. It seems, however, that he cannot gain a settlement by forty days' residence as on his own estate under the stat. 9 *Geo.* 1. *c.* 7.; the consideration being under 30*l.* (See this case more in detail, *ante*, p. 639.)

Father devised a tenement purchased for less than 30*l.* in trust to be let to farm

Rex v. *Holm East Waver Quarter, T.* 52 *Geo.* 3. 16 *East*, 127. *Bott, Cont.* 171. 2 *Nol. P. L.* 91. Removal of *Jane Anderson*, single woman, and her child *Mary Anderson*, aged five years, from *Holm E. W. Quarter*, in the parish of *Holm Cultram*, to the parish of *Aicton*, both in *Cumberland*: confirmed by

the sessions as to the child, but quashed as to the mother. — Case: *Jane Anderson*, being previously settled in *Aicton*, resided with her father *Daniel Anderson*, who was also settled in the same parish upon an estate in the removant township, which he had purchased for less than 30*l.* and continued to reside with him there till his death. The father died, leaving a will by which he devised this estate, consisting of a cottage and land, under the annual value of 10*l.*, to a trustee, in trust after his death, to let the same to farm during the natural life of his daughter, *J. A.*, the pauper, and to pay her the rents thereof (after deducting the expenses) during her life; and after her death to and for the use of his right heirs. — The pauper *J. A.* continued to reside upon the premises for more than forty days after the death of her father in the removant township, the trustee never having interfered. — The question was, whether *Jane Anderson* had such an estate in the premises as to gain a settlement by her residence thereon for more than forty days after her father's death? In favour of the settlement *Rex* v. *Offchurch* was cited, as shewing that an equitable title was sufficient; to this the Court agreed. *Contra*, it was argued that here the pauper only occupied as tenant to the trustee of a tenement under the annual value of 10*l.*, and that the cases of *Rex* v. *Offchurch*, *Cold Ashton*, and *Horsley*, only decided that when a party has an exclusive right to enforce the conveyance to him of the legal title, such a right coupled with the occupation of the property is sufficient to confer a settlement. — Ld. *Ellenborough* C. J. This species of settlement does not depend upon any term in a statute, but is an excepted case in the law, standing upon the rule, that a man shall not be removed from his own while his trustee permits him to occupy it, and from which nobody else had a right to remove him. Here the pauper did not reside in the character of a tenant: and whether the estate here were legal or equitable, it was still the pauper's own, and she could not be removed from it by an order of justices. — Orders confirmed.

Certificate person. — during his daughter's life, and to pay her the rents after deducting expences: Held, that by forty days' residence thereon by permission of the trustee, she gained a settlement.

(4.) How far a Certificate Person shall gain a Settlement by an Estate of his own, notwithstanding the Statute of the 9 & 10 W. 3. c. 11.

Burclear v. *Eastwoodhay*, *E.* 5 *Geo.* 1. *Sett. & Rem.* 121. 1 *Stra.* 163. *Burr. S. C.* 221. 2 *Bott*, 525. 2 *Nol. P. L.* 186. *Abraham Hacket* comes with a certificate into the parish of *Eastwoodhay*, and afterwards marries one *Sarah Smith.* Her father surrenders to her a copyhold estate of 20*s.* a-year, and so the husband had it in her right. — By the Court: The man has gained a settlement in *Eastwoodhay*; for a man cannot be turned out of his own, be it never so small. — And by *Fortescue* J. The party here could not be removed: And not removeable, and gaining a settlement, are the same thing; (but see *Rex* v. *Aythorp*, p. 650.) Then it was objected, that the person being a certificate person, he gains no settlement, unless he rents a tenement of 10*l.* a-year, or exerciseth an annual office; and that statute being an explanatory act, is not itself to be explained, and consequently cannot be taken farther than the words. — But by the Court: This is not an explanatory act but a new law, and must therefore receive a liberal construction.

A certificate person may gain a settlement by residing on his own estate where it comes to him by act of law; as in right of his wife.

Certificate persons.

The exceptions in the statute prove this case, being a case more reasonable than either that are there mentioned; and the parliament never intended to put a certificate man in a worse condition than another person.

Settlement where pauper not removable for 40 days.

[*Note.* — Where it is said all along throughout this course of settlements, that a person not removeable for forty days thereby gains a settlement; this is to be understood with respect to the particular instance only then spoken of; for it is by no means universally true, that every person who resides forty days unremoveable doth become thereby legally settled. A *servant* not removeable for forty days, gains no settlement unless he serves out his year: a *bastard*, with its mother for nurture for forty days, doth not thereby acquire any new settlement: So a *wife* residing upon the husband's estate; So a *certificate person*, or one residing on a *a purchase under the value of* 30*l.*, and not actually chargeable, though they are irremoveable, yet by such residence they acquire no settlement.]

So, if he purchase; and his apprentice may derive a settlement from him.

Ivinghoe v. *Stonebridge*, *H.* 6 *Geo.* 1. 1 *Stra.* 266. 2 *Bott*, 526. 2 *Nol. P. L.* 7. 187. A certificate man made a purchase in *Stonebridge*, and his *apprentice* lived with him for above forty days upon the purchased estate there. — And by the Court: The apprentice thereby gained a settlement; for when a certificate man maketh a purchase, he immediately ceaseth to be there in nature of a certificate man, and becomes a settled inhabitant, and consequently his apprentice with him.

So, where the property purchased is leasehold, and descends to a certificated person.

Rex v. *Stanfield*, *E.* 16 *Geo.* 2. 1 *Sess. Ca.* 316. *Burr. S. C.* 205. 2 *Bott*, 526. 2 *Nol. P. L.* 2, 3. 187. If an estate *descends* to a certificate person it gains him a settlement, because it is by operation of law, and not by any act of his own; and as the statute hath been laid open in cases of descents, it ought to be so in cases of purchases. — And by *Lee* C. J. the statute of the 8 & 9 *W.* 3. hath received a liberal construction; and hath been held to gain a settlement, both in descents and devises, and purchases. On the 13 & 14 *C.* 2. the construction has been, that let the value be what it will, a person cannot be removed from his own; and it seems to be the same upon the certificate act; for if he is not removeable within the 13 & 14 *C.* 2., he is not removeable on the certificate act. [*Note.* — The property here purchased was a leasehold estate.]

Rex v. *Deddington*, *T.* 16 *Geo.* 2. 2 *Stra.* 1193. *Burr. S. C.* 220. 2 *Bott*, 528. 2 *Nol. P. L.* 187. A certificate man *purchased* a house for 42*l.*, lived in it many years, then sold it, and becoming chargeable was sent back. It was insisted that the 9 & 10 *W.* 3. *c.* 11., saying, *a certificate man shall gain a settlement by no act whatsoever, unless the taking* 10*l. a-year, or serving an annual office*, this man, notwithstanding the purchase, might be sent back; and it was said to differ from the case of *Burclear* v. *Eastwoodhay*, where the surrender of a copyhold to the certificate man's wife was held to gain him a settlement; because there it was not his own act (as this purchase is) but it came to him by operation of the law. — But the Court did not think this a sufficient distinction, and said a purchase was in its nature an accepted case: and his selling it afterwards made no alteration.

A settlement may be gained by a certificated

Rex v. *Cold Ashton*, *H.* 31 *Geo.* 2. *Burr. S. C.* 444. 2 *Bott*, 530. 2 *Nol. P. L.* 71. 82. In *July*, 1725, *Daniel Harrison* and

Mary his wife, and *William* their son, went with a certificate from *Woodchester* to *Cold Ashton*. They all lived in the parish of *Cold Ashton*, from *July*, 1725, till about *Christmas*, 1728, at which time, *William Fido* the father of the said *Mary* died intestate, leaving the said *Mary* his daughter and five other children, and being at the time of his death possessed of and entitled to a tenement and two acres and a half of land, of the yearly value of 6*l.* 17*s.* in *Cold Ashton*, for the remainder of a term of 82 years, determinable on the death of himself and the said *Mary* his daughter. Upon the death of *William Fido*, *Daniel Harrison*, and *Mary* his wife, and *William* their son, who was then about five years old, entered upon and took possession of the said tenement and land, and *Daniel Harrison* and *Mary* his wife have lived in and occupied the same ever since, till the removal by the order now appealed against. But no administration of the goods or personal effects of *William Fido* was ever granted to the said *Daniel Harrison* and *Mary* his wife, or either of them, or to any other person. *William Harrison* lived with his parents *Daniel* and *Mary Harrison* in the said tenement till about 1748, when he married the pauper *Mary* (by whom he had the four children removed); and after his marriage, he and his wife *Mary* lived in the parish of *Cold Ashton* separate and apart from the said *Daniel Harrison*, until the time of the death of the said *William*, which was in the year 1755. *Mary* the widow of *William Harrison*, and her four children, having, after the death of the said *William*, become actually chargeable to the parish of *Cold Ashton*, were removed by order of two justices to *Woodchester* which had granted the certificate. Upon appeal, the sessions quashed the order, and stated the above case; which being removed by *certiorari*, it was moved that the order of sessions might be quashed. There were two questions: 1. Whether *Daniel Harrison* the father acquired any settlement different from that to which he was entitled by the certificate? 2. Whether, if so, the son gained, a derivative one? — Ld. *Mansfield* C. J. As to the first question, the case of a certificate man's gaining a settlement by residing on his own estate, is precisely the same as that of a common person not under a certificate, and arises by construction: for it is not within the words of the 9 & 10 *W.* 3. *c.* 11. which speaks only of serving an annual office, and renting 10*l.* a-year. But residing on a man's own estate was considered as a stronger case than the casual property acquired by renting, because he has a settlement on the statute of the 13 & 14 *C.* 2. not by the words, but on the principle that he cannot be removed. This construction being made upon the reason, gives a greater latitude to tne principle on which the construction is founded; and therefore a man who resides on his own estate, though of ever so small a value, is irremoveable: And this holds equally in the case of a certificate person, who gains a settlement, if, after he comes in by certificate, he is under such circumstances as by his property he cannot be removed. Whether in this case, *Daniel Harrison* had such a property in this leasehold estate when he first entered upon it, is a question that need not now be determined. What I ground my opinion upon is, that he has acquired by the length of possession such a right as he was not removeable from. For the statute of limitations doth not operate by way of barring the remedy only,

Certificate persons.

person, who has had twenty years' possession.

Certificate per-

but it gives a right. He may bring an ejectment after 20 years' possession; and no person could have recovered against him, because such person was out of possession all the time. I except the case of landlord and tenant; for, there, the possession of the tenant is that of the landlord. This possession gives a title from which the parish officers could not remove him, nor the next of kin. In the case cited, *Rex* v. *Widworthy, ante*, p. 607., they had been satisfied their shares; and here, if they have not controverted it for such a length of time, it is to be supposed they have given up that right. If the case had turned on the general question, whether the next of kin gains a settlement without administration, I should have desired time to consider of it, and the cases cited. There is a material difference between the party's being sole next of kin, and where in common with others, as in this case; for where one is the sole next of kin, he has the undoubted right to administration. In general, it is of more consequence, that the law with regard to the poor's settlements should be certain, than what the determination is as to the particular case in question. As to the second point, of a derivative settlement to the son; — the word *emancipation* is a loose term in our law, especially in the matter of settlements, and it is used in the books without affixing any precise idea. Indeed, it is a term borrowed from another law, and not properly applicable to ours. The rule I take to be this: Children are entitled to the settlement of their father, till they have acquired another. As to the distinction made at the bar, that the son shall not derive a new settlement from his father, because it was acquired by the father himself after the son had left him; this might be material were the fact so, but it is not stated here to say that was the case, or that he left his father so as to change his derivative settlement. It is stated, that he lived twenty years with his father in this tenement, or at least very near it, and we cannot intend that he did not. — Mr. J. *Denison* was of the same opinion. (Mr. J. *Foster* absent). — Mr. J. *Wilmott*: As to the father, I do not think it material to say any thing about the administration. Had the case turned upon that, it would have deserved consideration. If it be a matter already settled, I shall be for adhering to the rule (*stare decisis*), which is a right rule, and more especially in the poor law. — Possession by wrong gives a title upon an ejectment against the legal owner. Here is a legal title, without administration: After such a length of possession, one would be inclined to presume as much as possible. Now here it is possible that *Daniel Harrison* and his wife might have some grant or assignment from *William Fido* in his lifetime; or some other regular and rightful title to the possession which they took of this tenement. So that their possession might possibly have been a rightful one. — It would be too nice to be computing days, to see whether the son was with his father a day over or under twenty years. And the order of sessions was affirmed.

R. v. Cold Aston.

Possession.

So where an estate is devised to the wife of a certificate man.

Rex v. *Shenstone*, *M.* 32 *Geo.* 2. *Burr. S. C.* 468. 2 *Bott*, 467. 2 *Nol. P. L.* 78. 187. The wife of *Isaac Green*, a certificate man, had an estate *devised* to her for life by her father; upon which she and her husband entered, and lived thereupon for above six months. — By the Court: *Isaac* hereby gained a settlement, notwithstanding the certificate.

Rex v. *Wivelingham*, *T.* 21 *Geo.* 3. *Doug.* 767. *Cald.* 121. 2 *Bott*, 476. 2 *Nol. P. L.* 88. *Robert Bittany*, late husband of the pauper *Mary Bittany*, came with a certificate from *Hadenham* to *Wivelingham*, where one *Elizabeth Bittany* by her will devised her estate at *Wivelingham* to trustees to be sold, and the money arising from the sale thereof to be divided between the said *Robert Bittany* and three daughters of *William Bittany*. They all agreed among themselves, that *Robert* should have the real estate, and the three daughters of *William* the personalty amongst them, whereupon the trustees conveyed the said real estate to *Robert*; who entered and resided thereupon several years. The question was, whether this residence of *Robert* was such a residence upon his own property as would discharge the certificate, and gain a settlement. It was admitted, that residence on an estate in which a man has only an equitable interest is sufficient; but it was insisted, that *Robert* had taken no interest of any kind in the lands by the will, neither legal nor equitable. He had only a right to call upon the trustees to sell the estate, and distribute the money arising from the sale. On the other hand it was argued, that *Robert* had clearly an equitable title under the will; all the parties had agreed that the trustees should not sell; and that it was clearly settled, that a residence on one's own estate, coming either by descent or devise, whether the legal interest be coupled with the equitable or not, and whatever the value is, will gain a settlement, and discharge a certificate. — Ld. *Mansfield* C. J. mentioned the case of *Roper* v. *Radclyffe*, 9 *Mod.* 167. 181., to shew that a devisee of the surplus arising from the sale of lands after payment of debts and legacies, has an equitable interest in the lands themselves, it being in his option to pay the debts and legacies, and keep the land. — *Willes* J. said, the same question in this case had occurred in the case of *Rex* v. *Natland*, (*ante*, p.614.), which was referred to Mr. J. *Gould* on the circuit, who decided that a settlement was gained; and that his opinion had been afterwards recognised by the Court. And in the present case, the Court were unanimous, that *Robert* hereby vacated the certificate, and consequently gained a settlement.

In what place the residence must be.

(5.) How far Residence upon a Man's own Estate is necessary to gain him a Settlement.

Ryslip v. *Harrow*, *H.* 8 *W.* 3. 2 *Salk*, 524. 2 *Bott*, 513. 2 *Nol. P. L.* 69. 73. — By *Holt* C. J. Having land in a parish will not make a settlement, but living in a parish where one has land, will gain a settlement without notice; for the act never meant to banish men from the enjoyment of their own lands.

Residence necessary.

Wookey v. *Hinton Blewet*, *M.* 8 *Geo.* 1. 1 *Stra.* 476. 2 *Bott*, 513. 2 *Nol. P. L.* 60. 115. A person settled at *Hinton Blewet* had an estate descended to him in *Wookey*; whereupon the justices send him thither as to the place of his last settlement. — But by the Court: The order must be quashed; for it is no settlement nor inhabitation, though if he should go thither he could not be removed: it may be a great injury to send him away from a good trade at *Hinton Blewet*, to perhaps half an acre of land, wherein he has but a term.

In what place the residence must be.

Berkhamstead v. *St. Mary, North-Church, E.* 8 *Geo.* 2. 2 *Sess. Ca.* 182. 2 *Bott*, 25. 2 *Nol. P. L.* 158. The husband ran away, and it was not known whether he was alive or dead; in the mean time the wife had a house devised to her in *North-Church*, and she and her children went to live there. The question was, whether by continuing therein forty days, they gained a settlement? The Court seemed to be of opinion, since it was not known that the husband was dead, he must be supposed to be alive, and in that case that the wife could not gain a settlement for herself: but must follow the husband's settlement; and that the husband having not resided forty days at *North-Church*, in the said house unremoveable, he had gained no settlement there.

Rex v. *West Shefford, M.* 25 *Geo.* 2. *Burr. S. C.* 307. 2 *Bott*, 515. 2 *Nol. P. L.* 3. 115. *John Bird* came into *West Shefford* with a certificate from *Baydon*. During his stay at *West Shefford*, he became beneficially entitled to a leasehold estate of 14*l.* a-year there, determinable upon his own life. Upon which he entered on *November* 17th, and continued in possession till the 15th of *December* following, being 28 days only, when he died.— By the Court: In all cases, whether of ownership of land, or renting 10*l.* a-year, a residence of forty days is necessary. And the case of *Mursley* v. *Grandborough*, (*ante*, p. 608.), was cited as a case in point; in which it was holden by the Court, that any person who has an estate of his own, either freehold, copyhold, or a beneficial term for years, by act of law, (as by descent, marriage, executorship, or administration), may dwell upon it as his own, and he is not removeable; and will gain a settlement if he continue forty days, though under 10*l.* a-year. But he must abide forty days. And neither he nor his can be removed to it from any other place, unless he shall have resided forty days.

But residence upon the same estate is not necessary, provided it be in the parish.

But residence upon the *same estate* is not necessary, provided the residence be within the parish. As in the case of *Rex* v. *Sowton, H.* 12 *Geo.* 2. 2 *Sess. Ca.* 150. 19 *Vin. Abr.* 374. *Burr. S. C.* 125. 2 *Bott*, 513. 2 *Nol. P. L.* 116. A person who lived with his family at *Sowton*, having an estate at *Sydbury*, which the tenant gave up, went thither and lodged in an alehouse as a guest, without having any certain room there, and staid from *November* till *April*, but sometimes went to *Sowton*, where his children and family were, and to other places as his occasions required, possessed and managed his estate, by repairing fences, hoeing turnips, and the like. The question was, whether such inhabiting, and not upon the estate, would gain a settlement? And the Court were of opinion it would, and that it made no difference whether it were in his own house or in an alehouse: for being in the same parish he could not be removed.

Residence need not be for forty days together.

Also it is not necessary that such residence should be *for forty days together*. Thus in the same case of *Rex* v. *Sowton*, the question was moved, Whether, since he did not reside there for forty days together, but for more than forty days in the whole, such residence should gain a settlement?—And by the whole Court: It is not necessary upon the statute, that the residence should be fortydays successively. *Andr.* 345.

And, *Rex* v. *St. Nyott's, T.* 13 *Geo.* 2. *Burr. S. C.* 132. 2 *Bott*, 514. 2 *Nol. P. L.* 115, 116. *Nicholas Penquite*, the pauper, was born at *St. Cleerc:* afterwards he gained a settlement

at *St. Nyott's*; and from thence returned to *St. Cleere*, and lived there with his mother, on a tenement, in part of which he had an estate of freehold and inheritance, and of which he was seised in common together with his mother and sisters. He worked there as a day labourer, and lodged sometimes on his own estate, and sometimes in other places, where he worked in the said parish of *St. Cleere*, and at other times in other parishes adjoining; but did not live and reside on his estate in *St. Cleere*, or in the parish of *St. Cleere*, by the space of forty days together at any one time, between his leaving *St. Nyott's* and selling his estate in *St. Cleere*, (which was about three years after his returning to *St. Cleere*).—By the Court: This depends on the stat. 13 & 14 *C.* 2. which directs the sending a pauper to the place where he was last legally settled for the space of forty days. But this man continued, off and on, for more than forty days. And it is not necessary that he should have resided there forty days together. He was irremoveable from *St. Cleere* for above forty days; and that is sufficient.

Residence by a landlord upon his lessee's estate.

R. v. St. Nyott's.

Residence in the parish where the estate is, is sufficient; even though the estate be leased, and the owner reside forty days upon it by leave of the lessee, for the purpose of making repairs.

Rex v. *Houghton-le-Spring*, *H.* 41 *Geo.* 3. 1 *East*, 247. 2 *Bott*, 516. 2 *Nol. P. L.* 98. Removal from *South Shields* to *Houghton-le-Spring*, and confirmed by the sessions. The pauper became entitled as heir at law to three copyhold houses, let at 6*l. per annum*, and to one freehold house at *Sedgefield*. Upon becoming so entitled, he let to *R. W.* the freehold house at 3*l. per annum*, the pauper undertaking to sink a cellar, and make some repairs in the premises. *W.* entered and occupied. The pauper in pursuance of such agreement, went, after *W.* had possession, from *Houghton* to *Sedgefield*, for the sole purpose of sinking the cellar, and making the repairs. He was occupied upon the work for forty days, during the whole of which time he resided as a lodger in *W.*'s house. After finishing the work he returned to *Houghton*, to his father with whom he lodged. During the whole of the pauper's said residence at *S.*, the copyhold houses were in mortgage to *R. W.* for 40*l.* The pauper continued in the receipt of the rents for several years, and then sold the same for 130*l.* In support of the order of sessions it was argued, that the pauper's residence in *S.*, where he had an estate of his own in the occupation of another, would not give him a settlement there. 1st. Because it was accidental only, and for the special purpose of repairing the house; and for this they cited *Rex* v. *Catherington*. 2ndly, Because for the purposes of a settlement, the owner ought to be in the actual possession of it; though according to *Rex* v. *Sowton* it is sufficient if the owner reside in the parish. And they cited *Rex* v. *Dunchurch*, to shew that where the property is leased to another, a residence upon it will not gain a settlement.—(But *per* Ld. *Kenyon* C. J. That was the case of a *purchase*, and a distinction has always been taken between cases, where the party came to his property by his own act, or by operation of law.)—And it was also said that the general expression which runs through all this class of cases, that a party shall not be removed *from his own estate*, seemed to imply that he must be in *possession* of it, though he need not actually reside in it. On the other side it was argued, that in *Rex* v. *Catherington* the mortgagee was in possession, and there did not appear any surplus on which the interest of the mortgagor

Residence by a landlord upon his lessee's estate.

R. v. Houghton-le-Spring.

could attach. That in *Rex* v. *St. Michael's Bath*, the insolvent had conveyed all his interest to trustees, and no probability of a surplus; and the possession of it was afterwards fraudulently obtained by him. Here the pauper had a substantial freehold interest in the parish where he resided, and an undisputed residue in the copyhold premises. In *Rex* v. *Sowton* he resided, not on his estate, but at an alehouse in the same parish; yet he gained a settlement there. And further, 1st, A man cannot be removed from his estate devolved on him by operation of law, whatsoever the value may be; 2d, A residence for forty days irremoveable will gain a settlement, except in case of a purchase under 30*l*. 3d, It is enough to reside in the same parish. *Ryslip* v. *Harrow*, *Rex* v. *Sowton*, *Rex* v. *St. Nyott's*, *Rex* v. *Hasfield*. 4th, The party need not actually occupy his estate. It is sufficient to reside in the parish where he has a freehold. — Ld. *Kenyon* C. J. was clear that a settlement was gained at *Sedgefield*, and said that he was decided by the case of *Hasfield*, (*ante*, 606.), where the child residing with his grandmother, could not be taken to have been in actual occupation of the property; nor did the judgment of the Court proceed upon any such ground. — *Grose* J. agreed, That a mere residence in the parish where the estate was, was sufficient. — *Lawrence* and *Le Blanc* justices, doubted; but afterwards the Court were all agreed that here was a settlement gained in *Sedgefield*.

§ XII. Of Settlement by serving a Parish Office.

(1.) *What office will confer a settlement.*
(2.) *Of the time.*
(3.) *Of the residence.*

(1.) What Office will confer a Settlement.

3 & 4 W. & M. c. 11. Serving as officer, a settlement.

By stat. 3 & 4 *W. & M. c.* 11. § 6. If any person, who shall come to inhabit in any town or parish, shall for himself and on his own account execute any *public annual office or charge* in the said town or parish, during one whole year, he shall be adjudged and deemed to have a legal settlement in the same.

9 & 10 W. 3. c. 11. If he *bona fide* take a lease.

By stat. 9 & 10 *W.* 3. *c.* 11. No person who shall come into any parish by certificate shall be adjudged by any act whatsoever, to have procured a legal settlement in such parish, unless he shall really and *bonâ fide* take a lease of a tenement of the value of 10*l*., or shall execute some annual office in such parish, being legally placed in such office.

Deputy constable gains no settlement.

For himself and on his own account.] Therefore a person sworn into and serving the office of constable, as deputy to another, doth not thereby gain a settlement. 19 *Vin. Abr.* 379. *Lothsome* v. *Sheriff Hales*, 1 *Nol. P. L.* 560.

Rex v. *Winterbourn*, *H.* 4 *Geo.* 3. *Burr. S. C.* 520. 1 *Blac. Rep.* 452. 2 *Bott*, 163. 1 *Nol. P. L.* 552. 559. *3d edit.* The custom was for the constable to be presented by the jury at the leet. The jury presented *Richard Bayly*, esq., who procured the pauper to serve for him, in order to gain the pauper a settlement. The pauper accordingly was sworn into the office by a justice, and served the same for a year; but was not presented thereto at the court

leet, as constable in his own right. By the Court clearly: He gained no settlement. ***What is a public office or charge.***

Rex v. *Allcannings, H.* 9 *Geo.* 3. *Burr. S. C.* 634. 2 *Bott*, 164. 1 *Nol. P. L.* 556. 3*d ed.* The house occupied by Mr. *Amor*, being in turn to furnish a tithingman for the parish of *Patney*, the leet jury presented him to that office. And he, by leave of the court leet, put in his place *Thomas Palmer*, a common labourer, an housekeeper living in the same parish; who was sworn in accordingly at the said leet, and served the said office for a year; but Mr. *Amor* paid him all his expences attending the execution of it. — By the Court: *Palmer* gained no settlement in *Patney;* for clearly he served for *Amor*, and did not execute the office *for himself and on his own account.*

Constable serving by deputy gains a settlement.

But in the case of *Rex* v. *Hope Mansell, E.* 23 *Geo.* 3. *Cald.* 252. 2 *Bott*, 166. 1 *Nol. P. L.* 561., 3*d edit.* it was determined, that a person chosen and sworn into the office of petty constable, but who did not serve the office himself, but hired another person to serve as his deputy, thereby gained a settlement.

Annual office.] For what is an office or charge, see *Rex* v. *Mersham, post*, p. 665.

Parish clerk is an annual office.

Gatton v. *Milwich, H.* 10 *Ann. Set. & Rem.* 241. 2 *Salk.* 536. *Fol.* 123. 2 *Bott*, 157. 1 *Nol. P. L.* 522. 556, 557. 3*d edit.* A person being chosen *parish clerk* by a parson served for several years, and received his fees and dues. — By the Court: It is a parish office, and has the care and custody of the ornaments of the church. 'Tis true, if he is poor, and has a family, they may remove him: for although he came in by the parson only, yet their not removing him implies their consent and approbation; and by this consent of theirs, the law adjudges him in by the concurrence of the parish.

And in *Rex* v. *St. Mary, Berkhamstead, E.* 8 *Geo.* 2. 2 *Sess. Ca.* 182. 2 *Stra.* 942. The Court seemed to be of opinion, that the executing the office of a *parish clerk* is sufficient for a certificate-person to gain a settlement; for it is an *annual office* and more. And it is not necessary for a *parish clerk* to be licensed by the ordinary, in order to be legally placed in such office.

Curate not a public officer.

Helsington v. *Over, T.* 13 *Geo.* 3. *Burr. S. C.* 746. 2 *Bott*, 165. 1 *Nol. P. L.* 556. 3*d edit.* Two justices by their order removed the Rev. *John Langhorn* from *Helsington* in the county of *Westmorland*, to *Over* in the county of *Chester*. The sessions, upon appeal, confirm that order, and state specially: That on the first day of *October*, 1766, the vicarage of the parish of *Over* was sequestered for three years, or till the bishop should release the same: That on the twelfth day of the same *October*, the said *John Langhorn* was ordained deacon by the bishop of *Chester*, in order to supply the cure of *Over* during the sequestration: That from the 15th of the said month, to the 15th of *June*, 1768, he by an exchange with the curate at *Acton*, resided and did duty in the parish of *Acton*, but received his salary regularly from the sequestrators of *Over:* That from the said 15th of *June*, 1768, to the first day of *October*, 1769, he resided and did duty as curate at *Over*, when the sequestration ended: That it did not appear that he had any licence to the curacy of *Acton*. — Ld. *Mansfield* C. J. There is no colour for considering this as an annual office: It is no office at all. And *Aston* J. said, You cannot call it an annual

What is a public office or charge.

Helsington v. Over.

office, when the sequestration may be determined at any time. It is not like the annual office of a constable or a tithing-man. They are appointed generally, and to serve for a year. That of parish clerk is a freehold; and it is upon that foot that a parish clerk gains a settlement. The other two justices concurred. And both the orders were quashed.

Rex v. *Wantage*, *M.* 41 *Geo.* 3. 2 *East*, 65. 2 *Bott*, 169. 1 *Nol. P. L.* 553. 556. 3*d edit.* *R. Puzey*, clerk, was nominated by the rector of *East Lochinge*, to be curate of the same, and was duly licensed as such, by the bishop, who assigned to him the yearly stipend of 45*l.* The licence authorised the party during pleasure, "To perform the *office* of curate in the parish, &c. in reading the common prayer, and performing other ecclesiastical duties belonging to the said office, according to the form prescribed," &c. *Puzey* entered on the said curacy the same year, and performed the duties thereof for six years, during which time he resided in the parsonage house within the said parish. The question was, Whether this was a service of an annual public office or charge under the act? And the sessions were of opinion that it was not, and accordingly quashed the order of removal, removing him from *Wantage* to *East Lochinge.* — Ld. *Kenyon* C. J. There is no pretence for considering this as an office, the executing of which for a year will give a settlement. The statute of 3 & 4 *W.* & *M. c.* 11. *s.* 6., was evidently intended to be confined to inferior annual officers, such as constables and the like, known to the parish; and though in some instances the construction has been carried farther, yet I am not inclined to extend it to cases still further from the contemplation of the legislature. Order of sessions confirmed.

Sexton is a public officer, and gains a settlement if part of chapel yard is in the parish where he lives, though there be no burials in it during his being in the office.

Rex v. *Liverpool*, *H.* 29 *Geo.* 3. 3 *T. R.* 118. 2 *Bott*, 166. 1 *Nol. P. L.* 552. 556, 557. 559. 3*d edit.* *Samuel Littlemore* and his family were removed from *Liverpool* to *Stourton.* The sessions reversed the order, subject to the opinion of the Court on the following case: The pauper was originally settled in *Stourton*, and about sixteen years ago came to reside in *Liverpool*, and while he resided there was elected *sexton* by the proprietors of seats in the church or chapel of *St. James*'s, at a vestry there held in the presence of the churchwardens, being recommended by the then minister, to that office; and executed that office six years, lodging all the while in the parish of *Liverpool.* The boundary between *Walton* and *Liverpool* is in the chapel-yard of *St. James*'s; the church and part of the church-yard stands in the parish of *Walton*, and the other part of the church-yard is in the parish of *Liverpool;* but no corpse was ever buried in that part (within the parish of *L.*) whilst the pauper executed the office, though corpses have been buried there since. The inhabitants of *Liverpool*, seat-holders, and others, constantly attend the church of *St James*'s in proportion of fifty to one of any other parish or place. — Against the order of sessions it was admitted, that the office of sexton was such as would entitle the person executing it to a settlement; but it was contended under the words of 3 *W. & M. c.* 11. § 6., that the office must be executed *in* the town or place in order to give a settlement. But here he was chosen sexton to the chapel of *St. James*, which stands in the parish of *Walton;* and it appears that he never executed any part of the office in *Liverpool.* The

executing of an annual office is equal to giving notice, but the execution of this office in *Walton* was no notice to the parish of *Liverpool*. The sexton is appointed to the church, and not to the church-yard; for it appears from the definition of a sexton in *Burn's Eccl. Law*, and *Chamb. Dict.* that he is an officer to take care of the vessels, vestments, &c. belonging to the church, and to attend the minister and churchwardens at church; and this office is entirely distinct from that of a grave-digger.— Ld. *Kenyon* C. J. There is no doubt but that part of the office of sexton consists in digging graves: This is different from that of Sacrist, which is an office scarcely known since the Reformation, except in some of the cathedrals; whose duty it is to take care of the sacred vestments. And it is as clear, that the office of sexton is a public office within the meaning of the 3 *W. & M. c.* 11. *s.* 6. In this case the church-yard lies in two parishes, and the sexton gained a settlement in that in which he resided.—*Per Curiam*: Order of sessions confirmed.

What is a public office or charge.

R. v. Liverpool.

St. Mary v. *St. Lawrence in Reading*, *H.* 9 *Ann.* 19 *Vin. Abr.* 379. 2 *Bott*, 156. 1 *Nol. P. L.* 552. 557. 3*d edit.* Mr. *Foley* says, the question was, Whether the being (*a*) *warden for the borough*, and serving that office for a year in the borough which extends itself into several parishes, is such a service of an annual office as will gain a settlement? And, by the Court, it was held to be an office, the serving of which for one whole year was sufficient to gain him a settlement in that parish within the borough in which he lived. *Foley*, 121.—But in this report there must probably have been some mistake. A churchwarden is a parochial officer, and his office doth not extend into several parishes. Mr. *Viner*, from a manuscript note which he had of this case, says, The office is mentioned there to be warden of the borough (which is most likely,) being in nature of a *tithingman*, to execute the process of the justices of the borough. But he is not to execute his office in one parish only, but all over the borough. And it was doubted whether this was a settlement or not; because he was not elected into this office by the parish, neither was the exercise of his office confined to the parish; yet he is a public officer, and his office is partly exercised within the parish, so that the parishioners must take notice of him.—And, by the Court, it was held a good settlement, being within the express words of the statute of executing an office in a town or parish.

Warden for a borough, extending to several parishes, gains a settlement in the parish in which he lives.

St. Maurice's v. *St. Mary Kallendar* in *Winchester*, *E.* 8 *Geo.* 2. 1 *Burr. S. C.* 27. 2 *Bott*, 158. 1 *Nol. P. L.* 557. 3*d ed.* *William West*, a certificate-man from *St. Thomas's*, came into the parish of *St. Mary Kallendar* in *Winchester*. He was afterwards chosen one of the *constables* for the city of *Winchester*, which city consists of several other parishes besides that of *St. Mary Kallendar*; and was legally placed in that office, and executed it in and through all parts of that city for one whole year; during which time he resided in the parish of *St. Mary Kallendar*.—By the Court unanimously: He avoided his certificate, and consequently gained

Constable of a city which comprehends several parishes, gains a settlement in the parish in which he lives.

(*a*) *Note.*—In the 21st edition of this work, this question was stated as arising upon the fact of serving the office of *churchwarden*, but on reference to the books, it appears that the office was that of *warden*.

What is a public office or charge.

St. Maurice's v. St. Mary Kallendar.

a settlement in *St. Mary Kallendar*, by executing this office in that parish; though chosen by the whole city, and not by the parish of *St. Mary* singly; and though not a mere parish office. For, in the words of the act, he executed an annual office in the parish, being legally placed in such office.

Tithingman.

Burliscomb v. *Sanford Peverell*, *H.* 9 *Geo.* 1. 1 *Stra.* 544. The sessions on a special order adjudge that the office of *tithingman* is not such an office as that a man thereby shall gain a settlement. — But by the Court: The order must be quashed; for this is an annual office in the parish, within the words and meaning of the act.

Whether entering upon the office immediately, but not being sworn in till after the expiration of a year, be sufficient, *Qu.*

Holy Trinity v. *Garsington*, *H.* 2 *Geo.* 1. *Fol.* 123. *Sett. & Rem.* 95. *Burr. S. C.* 30. 2 *Bott*, 158. 1 *Nol. P. L.* 552. 556. 559. 3*d edit.* A certificate-man was appointed *tithingman* by the steward of a leet. He served a year; but was not sworn in till half the year was expired. The Court inclined that it was a good settlement; but being a new case, and somewhat doubtful, they ordered a second argument to this point, whether he was legally placed in the office or not, as not having been sworn till half the year was expired? But the order was afterwards quashed for want of complaint that the pauper was actually become chargeable.

Borsholder.

Wingham v. *Sellindge*, *M.* 17 *Geo.* 2. 2 *Stra.* 1199. *Burr. S. C.* 223. 2 *Bott*, 161. 1 *Nol. P. L.* 552. 558, 559. 3*d edit.* A certificate-man was told by his wife, that the borsholder had left a *wooden tally* at his house, as a token that he had been chosen *borsholder* at a court leet of the manor; but he did not know it of his own knowledge, nor was there any evidence of a presentment by the leet jury, or of his appointment or election, nor did he ever take the oath of office; but once he executed a warrant of a justice directed to the borsholder, and for that whole year he was willing and ready to execute the office. — By the Court: When an order of sessions states the facts specially, the Court must take it, that the justices have stated all the evidence that appeared to them. Now the act requires a legal placing in the office. But it is stated here negatively, that there was no presentment, no admission or swearing. So that here is no foundation for supporting a legal placing.

Hog-ringer.

Rex v. *Whittlesea*, *T.* 32 *Geo.* 3. 4 *T. R.* 807. 2 *Bott*, 166. 1 *Nol. P. L.* 553. 555. 3*d ed.* Removal from *Crowland* to *Whittlesea*, which was quashed at the sessions, subject to the opinion of the Court on the following case: — The pauper for upwards of twelve years immediately before his removal resided in *Crowland*, where he was legally chosen an *hog-ringer* for the parish of *Crowland* for one year, at a court leet for the manor of *Crowland:* he was presented by the jury for the said office, and was sworn therein, and paid 4*d.* for the oath, and he served such office two years on his own account. The duty of such office is to attend the open commons, to see that all hogs turned thereupon were rung, and such hogs as were not rung to take to the pound, which he frequently did, and he always received 1*d.* for impounding, and 6*d.* for ringing each hog. The appointment to such office is of great antiquity, and serviceable to the inhabitants of *Crowland.* — Ld. *Kenyon* C. J. It is stated in the case that this is an annual office of great antiquity, and serviceable to the parish at large,

and that there is an oath of office; therefore it seems to me, that it is a public annual office within the meaning of the act. *Every employment in a parish is not indeed equal to express notice, though it be a matter of notoriety to the parish.* It was once made a question, whether shoeing the horses of the lord of the manor was not equal to notice? But it was determined not to be equivalent. If this person had been hog-ringer to certain individuals only, he would not have thereby gained a settlement; but he was not merely an officer of *A.*, *B.*, or *C.*, but of all the inhabitants of the parish. It has been held that a tithingman, a borsholder, an ale-taster, or a hayward, may gain a settlement by serving either of those offices; and the latter, whose duty it is merely to take care of the fences within his district, cannot be distinguished from this case. — Order of sessions confirmed.

What is a public office or charge.

Notoriety of an employment not sufficient.

Rex v. *Whitchurch*, *T.* 27 & 28 *Geo.* 2. *Burr. S. C.* 365. 2 *Bott*, 163. 1 *Nol. P. L.* 552. 558. 3*d ed.* It was stated that the pauper was nominated at the court leet, and sworn into the office of *bailiff* or *ale-taster* for the borough: that he executed the office in the borough for a year: that the said office consists in inspecting weights and measures within the borough, and in warning the jury to serve at the court leet there: that the borough is not one-fifth part of the parish: that the bailiffs have never executed any authority over the parish at large: that great part of the parish knew nothing of such office: and that new married men, and new comers, were frequently nominated for the sake of colt-ale. On the authority of the case of *Rex* v. *Fittleworth*, (*post*, 665.), this was held to be a good settlement.

Bailiff or ale-taster for a borough.

Rex v. *Melborne*, *E.* 18 *Geo.* 2. 2 *Stra.* 1225. *Burr. S. C.* 244. 2 *Bott*, 162. 1 *Nol. P. L.* 555. 3*d edit.* *T. Membury* was certificated from *Sheepshead* to *Melborne*, and stayed there ten years, during which time the lady *Elizabeth Hastings* conveyed lands to trustees for several charities out of the profits; and amongst others, the sum of 10*l.* a-year to the charity-school at *Melborne*, to be paid to the vicar there for the time being. In the special order of sessions it was stated, that the certificate-man officiated as schoolmaster several years, and received the 10*l.* a-year from the vicar: and this, the sessions held, gained him a settlement in *Melborne*, where they declared he had a freehold estate; and so had both the requisites to obtain a settlement to a certificate-person, namely, a tenement of 10*l.* a-year, and executing an annual office. — But by the Court: The order must be quashed; a schoolmaster is not *an office*, but only *an employment*; and what interest *T. M.* had in the school, whether for life or otherwise, or how he came into this employment, doth not appear; and the legal right to receive the salary is in the vicar, who not caring to officiate himself, has therefore paid it over to this man as his deputy, which could never give any person a settlement, much less a certificate-man.

Schoolmaster not a public officer.

Note. A *schoolmaster* is not *legally placed in the office*, till he hath subscribed before the bishop the declaration of conformity to the liturgy of the church of *England*, and is licensed by him; and by stat. 13 & 14 *C.* 2. *c.* 4. § 10. if he shall execute the office without having so subscribed, he shall be utterly disabled, and *ipso facto* deprived thereof, and the same shall be void as if he were naturally dead; unless he is a protestant dissenter. In which

What is an office. case, in order to be legally qualified, he must at the sessions where he reside take the oaths, and make the subscriptions in like manner. as protestant dissenting ministers are required by the 19 *Geo.* 3. *c.* 44., whereof the clerk of the peace's certificate is the proper evidence. For which see title Dissenters, Vol. I.

Collector of duties on births and burials.

Bisham v. *Cook*, *H.* 7 *Geo.* 1. 1 *Stra.* 411. *Fol.* 124. 2 *Bott*, 157. 1 *Nol. P. L.* 552. 556. 3*d edit.* The sessions setting out the fact specially, adjudged the settlement of a poor person to be at *Bisham* because when he lived in that parish, he executed the office of *collector of the duties* given by stat. 6 & 7 *W.* 3. *c.* 6. on *births and burials.* It was moved to quash it, because this was not a parish office, and it would be giving the commissioners (who are to appoint the collectors) a power to bring what charge they would upon the parish: besides it was not stated in the order, that this was an annual office, as it must be to give a settlement, within the express words of the act. By the Court: The reason why the executing offices gives a settlement without notice is, because of the notoriety of the thing, of which the parliament thought it impossible but the parish should have notice: can any thing be more notorious than this, which is to collect a duty from house to house? We cannot suppose a fraud in the commissioners; that they would appoint a person of no substance to be collector, only to bring a charge upon the parish.

Needs not be a parish office.

It needs not to be a *parish office*, but a *public annual office in the parish.* And as to its not being said, that this man executed it for a year, we must take it he did so, because it appears, on looking into the statute, that the power given to the commissioners is to appoint *a person who shall be collector of the duties for a year*, and then give in his accounts. It hath been held a settlement in the case of the land-tax, and why not in this? And the order was confirmed.

Collector of the land-tax.

Rex v. *Hammond*, *H.* 7 *Geo.* 1. 2 *Bott*, 157. 1 *Nol. P. L.* 552. 3*d ed.* — By *Pratt* C. J. Serving the office of collector of the land-tax is a sufficient office to gain a settlement within the 3 & 4 *W.* 3. *c.* 11. § 6. for it is not necessary that the office should be a parish office: any office is sufficient, so that by the notoriety of it, it may be presumed that the parish had notice of the persons being come into the parish.

Governor of a workhouse.

Rex v. *Ilminster*, *M.* 41 *Geo.* 3. 1 *East*, 83. 2 *Bott*, 167. 1 *Nol. P. L.* 554. 3*d ed.* Removal from *Honiton to Ilminster* and confirmed by sessions. The case originally stated for the Court of K. B. was, That the pauper was appointed governor of the workhouse in *Ilminster* under the annual salary of 20*l.* He served for five years, and regularly received his salary: at the end of that time he was dismissed: at the time of his appointment he was put by the parish officers into possession of certain apartments in the workhouse appointed for that purpose, and which had been occupied by the former governor. Upon the second statement, these words following were added after the word *officers*, "(*in conjunction with two of the principal people of the town who acted as inspectors of the accounts, and conduct of the overseers.*)" — And it was also stated, that the said office of governor "was a public annual office." And the Court said, that by this finding, "that it was a public annual office," they had precluded any further discussion.

Rex v. *Mersham*, *H.* 46 *Geo.* 3. 7 *East*, 167. 2 *Bott*, 170. 1 *Nol. P. L.* 553, 554. 3*d edit.* Removal from *Boxley* to *Mersham*, and confirmed by the sessions. The material parts of the case stated to the Court of K. B. and upon which the question was decided, were, that the pauper at a vestry meeting offered his proposals to become master of the workhouse: that at a subsequent vestry meeting, at which twelve of the inhabitants were present, he was informed by the parish officers that he was appointed master of the workhouse of the parish of *B.* at a salary of 16*l. per annum.* No time was ever mentioned for which he was to hold his situation. No appointment was made in writing, nor any entry in the parish books. After serving for four years, he was dismissed at a quarter's notice.— After argument, Ld. *Ellenborough* C. J. said, The principle on which this mode of gaining a settlement has been given is undoubtedly notoriety to the parish, but a settlement can only be gained in this mode upon the terms of the act of parliament; *viz.* by executing "a public annual office or charge in the parish:" which brings us back to the question, Whether that which the pauper was appointed to execute were a *public office or charge?* And it appears to me that he cannot be considered as a public officer. An *office* must be derived either immediately or mediately from the crown, or be constituted by statute; and this is neither one nor the other, but merely arising out of a *contract* with the parish, which the parish officers, with the consent of the parishioners, are by the statute enabled to make with any person for the maintenance and employment of the poor. I find no distinction between *office* and *charge;* if there were, the question might admit of a different consideration. The determination of the appointment at a quarter's notice, repels the presumption that it was an *annual* office or charge; therefore, as far as we can collect the intended duration of the employment from the acts of the parties, it appears that the parish might put an end to it within the year if they thought proper; upon the whole, therefore, it appears neither to have been an office, nor a public office, nor a public annual office within the statute.—*Lawrence* J. said, it was clearly no *office;* but only an *employment* arising out of a contract, between which and an office there is a great distinction. (*Rex* v. *Melborne*, *ante*, 663.) And he agreed in the definition of the word *charge*, that it must be taken to mean something of the same kind with *office*, though it may not commonly be known under the name of an *office.*— *Le Blanc* J. agreed. Both orders confirmed.

What is an office.

Master of a workhouse not a public officer

Nature of a public office or charge.

(2.) Of the Time.

Rex v. *Fittleworth*, *M.* 18 *Geo.* 2. *Burr. S. C.* 238. 2 *Bott*, 172. 1 *Nol. P. L.* 561. 3*d edit.* A certificate-man was elected and sworn a tithingman for a tithing which did not extend through all the parish of *Fittleworth*, but comprehended that part of it where he resided. He executed the office a little more than five months, and then became actually chargeable, and asked relief. Whereupon two justices removed him, and their order upon appeal was discharged. And by the Court; The justices had jurisdiction to remove him, though in execution of the office, he being become actually chargeable. It is not necessary that the

Serving a part of the year only.

A person is removeable if chargeable,

Of the time.

though in the execution of an office.

office should extend throughout all the parish: the act only requires executing some annual office in the parish. But it must be executed for the space of a whole year. And the present case being an execution for less than a whole year, it did not avoid his certificate, and, consequently, did not gain him a settlement at *Fittleworth.*

Serving for half a year at a time only.

Cold Ashton v. *Woodchester, H.* 31 *Geo.* 2. *Burr. S. C.* 444. 2 *Bott,* 174. 1 *Nol. P. L.* 557. 3*d edit.* There was a custom to serve the office of tithingman, for half a year only at a time. — By Ld. *Mansfield* C. J. This cannot be an annual office to gain a settlement. In this case the pauper had served the office of tithingman in *Cold Ashton* for half a year, and twenty years after for another half year.

Ale-taster.

Rex v. *Bow, H.* 40 *Geo.* 3. 8 *T.R.* 445. 2 *Bott,* 175. 1 *Nol. P. L.* 557. 562. 3*d edit.* The pauper, at a *Michaelmas* court-leet, holden by adjournment for the manor and borough of *Chumleigh, Nov.* 16, 1792, was appointed to the office of ale-taster of the borough, and duly sworn according to the custom of the manor, *to execute the said office for one year thence next ensuing, or until he should be lawfully discharged from the same.* He entered upon the office, and served till *Nov.* 1. 1793, when, at a similar court holden by adjournment, a new officer was appointed. No business is transacted at the original court; and there is only one original court in the year for the said manor and borough, and it is held within the month after *Michaelmas* at the convenience of the steward. The removal was from *Chumleigh* to *Bow,* and was confirmed by the sessions. — In support of the order of sessions it was argued, that the pauper did not execute the office for one whole year, and that the appointment was only conditional. That here the appointment could not relate back to the original court, as it was not a general appointment, but *from thence,* which must mean the very day of the appointment. And *Rex* v. *Fittleworth* was cited. On the other side the case of *Rex* v. *Newstead* was cited to shew that by custom a hiring and service for a period less than a year would confer a settlement. But Ld. *Kenyon* C. J. held clearly that no settlement can be gained in this case, and he pointed out the distinction of *Rex* v. *Newstead* from this; that in that case there was a hiring from one moveable feast to another.* But here the appointment was from one court till it should please the steward to hold another.

Where a pauper was legally sworn in as a borsholder at a court leet, and after executing the office a few days, he was afterwards irregularly, by two magistrates, discharged from executing his office, and another person appointed; but he acquiesced in this, and did not in

Rex v. *Holy Cross, Westgate, T.* 2 *Geo.* 4. 4 *B. & A.* 619. Two justices by their order removed the pauper *Edward Best,* from the parish of *Holy Cross, Westgate,* in the city of *Canterbury,* to the parish of *Holy Cross, Westgate,* in the county of *Kent.* The sessions on appeal confirmed the order, subject to the opinion of the Court of K. B. upon the following Case: The city of *Canterbury* is divided into six wards, and two of the twelve aldermen of the city are appointed for each ward; a court-leet is held annually by the two aldermen, at which a constable and borsholder for the ward are chosen. In the month of *October,* 1817, and for some time previously, the pauper resided and carried on business in the parish of *St. Mary Northgate, Canterbury,* which is in the ward of *Northgate,* that ward containing the parishes of *St. Mary Northgate,* and *St. Alphage.* On the 21st *October,* 1817, the annual court-leet was held for the ward

of *Northgate*, at which the pauper was duly chosen borsholder of the ward for the year ensuing, and upon being sent for to take upon himself the office, he attended at the court, and was regularly sworn in; the staff of office was also delivered to him by the former borsholder. A day or two afterwards he happened to be at the *City Arms* public house within his ward, when a dispute arose between some persons which was likely to create a disturbance, and he was desired to preserve the peace; in consequence of which, he fetched his staff, and put an end to the dispute, but he did not do any other act as borsholder than that. After he had been sworn in a few days, he was desired to attend the monthly meeting of the magistrates, and he attended with his staff; he was called into the council chamber, and informed by the then mayor, that as it was a question as to what parish he belonged, he must leave his staff there for the present, and that he should know further about it in a few weeks; he left his staff accordingly, and not having heard any thing more, he did not act, nor was he called upon afterwards to act as borsholder. The steward of the leet notified the pauper to the magistrates, as the sworn borsholder for the ward of *Northgate*, and he appeared so in the list of peace officers entered in their record book. The succeeding court-leet for the ward of *Northgate* was holden on the 20th *October*, 1818, and the pauper resided during the whole of the year in the parish of *St. Mary Northgate*. The duties that were required to be performed by the borsholder of the ward of *Northgate*, during the remainder of the year, were performed by another person, who resided part of that time within the ward, and part in the borough of *Staplegate*, adjoining to the ward, but not within the jurisdiction of the city of *Canterbury*, but that other person was not chosen or sworn in as borsholder of the ward, nor did he attend the sessions in that character, nor was his name enrolled in the list of peace officers. — After argument, *Abbott* C. J. said, At the time of passing 3 & 4 *W.* & *M.* *c.* 6. it was possible for any individual to gain a settlement by a residence for forty days in the parish. The object of that act was, to add to this the necessity of delivering to the parish officers a notice in writing, which they were required to read in the church and to register, in order that there might be public notice to all the inhabitants, that they might, in case the individual was likely to become chargeable, procure his removal from the parish. But that act contemplated two cases in which no notice in writing was to be given, *viz.* the serving an annual office, and the payment of parish rates. Its object was obviously notoriety. Now this is only attained by the actual execution of the office, and not by the appointment to it. Although, therefore, it does appear that the pauper in this case was irregularly discharged from his office, and another person irregularly appointed to succeed him, yet as he did forbear to do the duties of it, I think he cannot within the statute be considered as having executed a public annual office in the parish, and that he did not thereby gain a settlement. The judgment of the sessions was therefore right. Order of sessions confirmed.

Of the time.

fact execute the office: Held, that this was not executing an annual office within the parish so as to confer a settlement.

(3.) Of the Residence.

It seems as if there must be a residence of forty days at least in the parish, in which the office is executed and the settlement claimed. The point appears not to have been regularly decided. In Mr. *Const*'s report of *St. Maurice* v. *St. Mary Kallendar*, (2 *Bott*, 159. *ante*, 661.) Ld. *Hardwicke* is made to say, that the Court construed the words of the act, "in the said parish," not as importing an office *in* the town or parish, but more largely any office, while the person remains in the said town or parish. Mr. *Nolan* doubts the accuracy of this report, as not being found in *Burrow*, and urges, that both the statutes and subject require that he shall execute the office *in* such parish. 1 *Nol. P. L.* 562. 3*d ed.*

Mr. *Nolan*'s opinion is not, in fact, at variance with the case of *Rex* v. *Liverpool* (*ante*, 660.); for therein it is stated, that part of the sexton's duty was in the parish in which the settlement was claimed, or, at least, that part of the subject matter of his duty was there, and which he was liable to be called upon to perform, and ready to perform if called upon.

See the cases of *Rex* v. *Liverpool*, *St. Mary* v. *St. Lawrence in Reading*, and *St. Maurice* v. *St. Mary Kallendar* (ante.)

§ XIII. Of Settlement by being charged with, and paying towards, the Public Taxes or Levies of the Parish.

(1.) *Of inhabitancy.*
(2.) *Of the being charged.*
  (*a*) *The tenant must be the person charged.*
  (*b*) *Of the landlord's refunding.*
(3.) *What taxes are within the act, as the land-tax, church rate, and other taxes.*
(4.) *Of stat.* 35 *Geo.* 3. *c.* 101.

13 & 14 C. 2. c. 12. By stat. 13 & 14 *C.* 2. *c.* 12. *Forty days' inhabitancy shall gain a settlement.*

3 W. c. 11. *By stat.* 3 W. c. 11. § 6. *if any person who shall come to inhabit in any town or parish shall be charged with and pay his share towards the public taxes or levies of the said town or parish, he shall be adjudged to have a legal settlement in the same.*

35 G. 3. c. 101. But by stat. 35 *Geo.* 3. *c.* 101. § 4. *No person, after* 22*d* June, 1795, *who shall come into any parish, township, or place, shall gain any settlement therein by being charged with and paying his share towards the public taxes or levies of such place, for and on account or in respect of any tenement not being of the yearly value of* 10*l.*

In respect to this statute, it is very clear that the legislature meant that no person should gain a settlement after the passing of the act by being rated and paying; the words *who shall come* into any parish, mean who shall *inhabit* there. It was intended to make an end of this head of settlement law in future. — *Per* Ld. *Kenyon* C. J. in *Rex* v. *Islington*, *H.* 41 *Geo.* 3. 1 *East*, 283. 2 *Nol. P. L.* 124.

Rex v. *The Inhab. of Penryn*, *M.* 57 *Geo.* 3. 5 *M.* & *S.* 443. 2 *Nol. P. L.* 124. Upon appeal, the court of quarter sessions for the county of *Cornwall* quashed an order of two justices for the removal of *Thomas Morris* and *Elizabeth* his wife, from the borough of *Penryn* to the parish of *Crantock*, in the said county, subject to the opinion of the Court of K. B. on the following Case;— The pauper being legally settled in *Crantock*, went with his wife, several years ago, to *Penryn*, and resided there, occupying four rooms, at the yearly rent and of the value of 4l., part of a large dwelling-house of the yearly value of 18*l.* and upwards. The other parts of the dwelling-house were occupied by several other tenants, two of whom also paid 4*l.* a-year each for their respective apartments. This dwelling-house had but one outer door and one staircase; and each tenant kept the key of his own apartment. For three years and upwards immediately preceding the date of the order of removal, the pauper was rated to the church and poor-rates for the whole house, and paid the same; and they were allowed to him out of his rent, except in one instance. While he was thus rated, he occupied no other property than the four rooms, and had no concern with or controul over the remainder of the house; and during the whole time he was so rated, he resided in the said rooms. In support of the order of sessions, it was contended, that the pauper acquired a settlement, by having been charged and paid his share towards the public taxes of the parish. That, with respect to the act 35 *G.* 3. *c.* 101. § 4., though it has, in most instances, done away this head of settlement, by enacting, that "no person shall in future gain a settlement by being charged with and paying his share towards the public taxes of the parish for any tenement, not being of the yearly value of 10*l.*;" yet here, the tenement being above that yearly value, the settlement is not affected by this enactment. *Contrà*, the judgment of Lord *Kenyon*, in *Rex* v. *Islington* (1 *East*, 283.) was cited, who considered it to be clear, that the legislature meant that the operation of the act 35 *G.* 3. should be general; and that no person, after the passing of that act, should gain a settlement by being rated and paying. It was intended to make an end of this head of settlement law in future.— Lord *Ellenborough* C. J. It will be in vain for the legislature to make general enactments, if such enactments are to be explained away, and their operation defeated by nice distinctions. The stat. 35 *G.* 3. *c.* 101. § 3., in the first instance, prevents any person from gaining a settlement by delivery and publication of notice; in the next place, the statute prevents any person from gaining a settlement by being charged with and paying his share towards the parish taxes, in respect of any tenement not being of the yearly value of 10*l.* This enactment was undoubtedly meant to abrogate this head of settlement, and the authorities upon it, which, perhaps, had been carried to some degree of absurdity. Lord *Kenyon* appears so to have considered the operation of the act; and I am glad that we have his authority for it. If this construction of Ld. *Kenyon* had not been felt to be the correct one, I doubt not that we should have had some observation upon it from the learned reporter with whom the act originated, and which is generally known by his name.— *Abbott* J. This act prevents the removal of any person before he is actually chargeable. This rendered it expedient

A person occupying, at 4*l.* a year, part of a dwelling-house of the annual value of 18*l.* does not, since 35 G. 3. c. 101. § 4, acquire a settlement, although he be rated, and pay to the church and poor-rate for the whole house.

to do away with settlements by notice, or paying rates for tenements of very small value. *Per Curiam.* — Order of sessions quashed.

A settlement may be gained by being rated and paying parochial taxes in respect of a tenement, being above the annual value of 10*l.*

Rex v. *The Inh. of St. Pancras, T.* 4 *Geo.* 4. 2 *B.* & *C.* 122. 2 *Nol. P. L.* 125. Removal of *Kitty Buchan*, the wife of *William Buchan*, from the parish of *Lambeth*, in the county of *Surry*, to the parish of *St. Pancras*, in the county of *Middlesex*, as the place of the last legal settlement of the said *Kitty Buchan*. The sessions confirmed the order, subject, &c. Case:—The husband of the said *Kitty Buchan* occupied a house in *Thornhaugh-street*, in the parish of *St. Pancras*, and resided in the same for a period not exceeding nine months, and subsequent to the 2d day of *July*, 1819, at the yearly rent and value of 80*l.*; and during such occupation her said husband was regularly rated by, and paid a poor-rate to, the parish of *St. Pancras*, as such occupier of the said house. The case having been argued, *Cur. adv. vult.* — Afterwards *per Bayley* J. The question in this case is, Whether the right to a settlement by being rated and paying taxes, was still a subsisting right at the time when the pauper was rated and paid, the tenement which he occupied being of the annual value of 10*l.* or upwards? In this case the pauper could not gain a settlement by renting it, because he had not been in the occupation of it for the period of one whole year, as required by the 59 *Geo.* 3. *c.* 50. In order to decide the question, we must advert to the 35 *Geo.* 3. *c.* 101. § 4., which enacts, that "no person or persons whatsoever, who shall come into any parish, township, or place, shall gain a settlement in such parish, township, or place, by being charged with and paying his, her, or their share towards the public taxes of the said parish, &c. for, and on account, or in respect of any tenement or tenements, not being of the yearly value of 10*l.*;" and it has been contended, that this head of settlement was entirely put an end to by that clause. It is material to consider what was the law upon this subject before the 35 *Geo.* 3. *c.* 101. passed. A person rated and paying taxes for a tenement, whatever might be its value, acquired a settlement. The parish in such case was considered as having adopted him as one of their parishioners. In most instances, where the tenement was of the yearly value of 10*l.*, the occupier would obtain a settlement upon other grounds. In the course of the argument, however, one instance was referred to, in which a party occupying such a tenement would not acquire a settlement, unless on the ground of paying rates. I allude to the case of a person living in a house belonging to the king, as a servant of the public. The words of the clause to which I have referred do not, in terms, import an intention of the legislature to abolish this head of settlement entirely. They are qualified, and apply expressly to tenements not being of the yearly value of 10*l.* And before we give a general effect to words which are not in themselves general, we ought to see clearly that such was the intention of the legislature. I think that it would be going too far to give a general effect to the words of this act, when we find that being rated and paying, as applied to a tenement of above the annual value of 10*l.*, was one medium by which a settlement in all cases might be obtained, and in some instances the only medium.

The cases of *Rex* v. *Islington*, and *Rex* v. *Penryn*, have been referred to in argument, and are certainly at variance with the opinion of the Court. In the former, however, the point did not arise, and the opinion of Lord *Kenyon* was quite extra-judicial. The real question was, Whether the operation of the 35 *Geo.* 3. *c.* 101. § 4. was limited to persons who should thereafter come into any parish, or whether it extended to persons residing there before. In *Rex* v. *Penryn*, the question was again presented to the consideration of Lord *Ellenborough*, who certainly gave a distinct opinion, that it was the intention of the legislature to abolish entirely this head of settlement. The present Lord Chief Justice merely said, "that it was expedient to do away settlements by paying rates for tenements of very small value." It does not appear by the report whether my brother *Holroyd* or myself were present. These two authorities naturally drew the attention of the Court carefully to consider the words of 35 *Geo.* 3. and the state of the law as it existed before the passing of that act. If there had been no case before that time in which the occupier of a tenement of 10*l.* annual value would gain a settlement by the payment of rates, and on that ground only, then perhaps the words of the statute might be construed to have a general operation, and to annihilate this head of settlement altogether. One instance, however, has been mentioned, and possibly there may be others, where, before the statute 35 *Geo.* 3. a settlement could not be acquired at all by the occupier of such a tenement unless by the payment of rates; and that being so, I think that we are not warranted in saying that these qualified words were intended by the legislature to have a general and unqualified operation so as to abrogate entirely this head of settlement. It might perhaps be imagined, when the 59 *Geo.* 3. *c.* 50. passed, that this head of settlement no longer existed; and we have avoided delay in giving our opinion, that if such were the notion, the error may be remedied during the present session of parliament. Order of sessions confirmed. (*a*)

R. v. St. Pancras.

(*a*) The sole object of the legislature in passing the 35 *G.* 3. *c.* 101. was to take away the power of removing poor persons likely to become chargeable, and to make them irremoveable till actually chargeable. But in doing this, it became necessary to guard against certain evils which this change would produce to parishes. For instance, by the old law, a person coming into a parish, and giving a written notice to the overseers, would, if he resided forty days, gain a settlement. The reason of this being, that if likely to be chargeable, the overseers, availing themselves of the knowledge thereby communicated, might remove him. But when the law was altered, and actual substituted for probable chargeability, it would follow that a person very likely to become chargeable might, if he was desirous of doing so, come in and give notice, and, in defiance of the overseers, acquire a settlement by only not demanding relief for forty days. In order to remedy this evil, settlement by notice was abolished by § 3. So, again, if a person came to settle on a tenement under 10*l.*, he would, by the old law, be removeable if likely to become chargeable; but if he was rated, and paid rates in respect of it for forty days, and was not during that time actually chargeable, he might become settled in the parish, and demand relief on the forty-first day. For this reason, such persons rated in respect of tenements under 10*l.*, were prevented by § 4. from gaining settlements by paying rates. Similar reasons may be given for the two remaining enactments in the fifth and sixth sections. The whole may be thus summed up: Wherever the change of the law from probable to actual chargeability, enabled persons who were likely to become chargeable to obtain settlements by preventing the parish officers from removing them during

9 & 10 W. 3. c. 11. Certificate persons.

By stat. 9 & 10 *W. c.*11. *Persons residing under a certificate shall gain no settlement by being rated to and paying any such levies, taxes, or assessments.*

(1.) Of Inhabitancy.

Shall come to inhabit.] In the case of *Rex* v. *St. Michael* at *Thorn in Norwich*, *H.* 36 *Geo.* 3. 6 *T.R.* 536. 2 *Nol. P.L.* 132. It was determined; that where a person is *rated in one parish and resides in another*, he does not gain a settlement by paying such rate: And Ld. *Kenyon* C.J. added, The statute says, that any person who shall inhabit in any town or parish, and be charged with and pay his share towards the public taxes *of the said* town or parish, shall thereby obtain a settlement; but in this case the pauper's husband lived in one parish, and was assessed in another, therefore this does not come within the statute of *William*.

(2.) Of the being charged.

If the rate informal, still payment of the sum assessed is sufficient.

Shall be charged with.] Although the rate be in form, or in the manner of making it, not strictly legal, but void; yet if the party be rated and pay to such a rate, he shall gain a settlement: for it would be hard, that one of the parish should come and say, that was a void rate, being of their own making, and acquiesced under, and the money paid accordingly. 19 *Vin. Abr.* 386. *St. Giles's, Cripplegate*, v. *St. Mary, Newington*, 2 *Nol. P.L.* 126.

But not if the name be inserted after the rate is paid.

In *Rex* v. *Edgbaston*, *H.* 36 *Geo.*3. 6 *T.R.* 540. 2 *Nol.P.L.* 127. It was determined, that if a person's name be inserted in a rate *after payment*, it is not such a rating as will gain a settlement.

(a) The Tenant must be the Person charged.

The person paying must also be the person rated; and he must be the tenant

Shall be charged with and pay his share towards the public taxes.] *Sealon Tongall* v. *Worplesdon*, *M.* 13 *Geo.* 1. *Fol.* 128. 2 *Sess. Ca.* 122. The *landlord was rated* to the poor for the tenement, as being in his hands, and *the tenant paid* the rate. — By the Court: The tenant doth not gain a settlement, unless he be both rated and pay.

There must be both a rate made upon,

Kinver v. *Kingswinford*, *E.* 4 *Geo.*2. *Fol.*120. 2 *Nol.P.L.*110. 3*d edit.* A person rented a tenement and paid all parochial taxes for the same in his own right, but was not rated in the parish

forty days, those settlements were abolished; but where, by the law as it stood before the 35 *G.* 3. *c.*101., such persons were irremoveable, that act did not interfere with their cases. See the judgment of *Holroyd* J. in *Rex* v. *Idle*, 4 *B.* & *A.* 156. Applying this principle to the case here decided, we may conclude that the 35 *G.* 3. *c.*101. did not prevent settlements by paying rates in respect of tenements above 10*l.*; for to such cases the inconvenience above pointed out did not apply. By the 13 & 14 *Car.* 2., persons coming to settle on tenements above 10*l.*, and consequently persons paying rates in respect of such tenements, were irremoveable, even though likely to become chargeable. Their situation, therefore, was not altered by the 35 *G.* 3. *c.*101. 2 *B.* & *C.* 128. *note.*

books; but the name of *Richard Coates* that rented the tenement before was kept in the levy books. — By the Court: This was no settlement.

Who shall be charged.

Rex v. *Sarratt*, *M.* 9 *Geo.* 2. *Burr. S.C.* 73. 2 *Nol. P.L.* 126. The landlord, who never occupied the house, was charged to the poor rate; but the tenant, on demand of the overseers, paid it. — By Ld. *Hardwicke* C. J. and the Court: The charging is the principal act, as it infers notice to the parish; but both are necessary. The tenant must both be charged and pay, in order to gain a settlement.

and payment by the person claiming a settlement.

Rex v. *Bramshaw*, *M.* 10 *Geo.* 2. *Burr. S.C.* 98. 2 *Nol. P.L.* 109, 3*d ed.* The landlord of the house, who was also overseer of the poor, was charged to the poor rate; but the tenant on demand of the said landlord, paid the rate. — By the Court: It is a settled point, that a person must be rated as well as pay; otherwise he gains no settlement.

Rex v. *Lower Walton*, *H.* 10 *Geo.* 2. *Burr. S.C.* 100. 2 *Nol. P. L.* 109. The father was rated, and the son who occupied the tenement paid the rate. — By the Court: This gave no settlement to the son.

Rex v. *Heckmondwicke*, *H.* 21 *Geo.* 3. *Doug.* 564. *Cald.* 103. 2 *Nol. P.L.* 128. The mother occupied the house, and was rated and paid the taxes till the time of her death; after which, her son occupied the house and paid taxes, but the parish officers continued her name in the rate, knowing at the same time that she was dead. — By Ld. *Mansfield* C. J. There must be such a rating, and paying, as to shew manifestly that the parish had notice. Here the rate was continued in the name of a dead person, whom the parish officers knew to be dead. The rate ought to be made on the occupier, and could be on nobody else. This (he said) was determined in the case of *Rex* v. *Walsall*, *infra*, where the rate was "*Late* Lowbridge's."

The rate must be on the occupier.

It is not necessary that the occupier should be rated by name; as in the case of *Rex* v. *Brightman*, *E.* 8 *Geo.* 1. 8 *Mod.* 38. 2 *Burr.* 1062. Where a man lived in a place called *Hoscoe*'s tenement, and paid taxes there by the name of the *occupier* of *Hoscoe*'s; this was adjudged to be a sufficient designation of the party, so as to gain a settlement.

But a person may be rated by another description than that of his name as "occupier" or "tenant."

Rex v. *Painswick*, *T.* 31 *Geo.* 2. *Burr. S. C.* 465. 2 *Nol. P. L.* 127. The pauper, *Isaac Moorman*, took a house in *Cirencester*, of one *Thomas Clifford*, and agreed to pay the land-tax, and poor-taxes, and all other taxes. The rating was thus: "*Thomas Clifford, or tenant.*" *Moorman* paid the taxes: and the overseers gave receipts to him in his own name. The landlord, *Thomas Clifford*, lived five miles off. It was urged, that *Isaac Moorman* himself was not rated: being neither expressly named, nor even personally hinted at. But the Court was clearly of opinion, that this man was sufficiently charged, to notify to the parish of *Cirencester* that he was an inhabitant there, and consequently gained a settlement by payment of the rates so charged.

Rex v. *Walsall*, *M.* 18 *Geo.* 3. *Cald.* 35. 2 *Nol. P. L.* 127, 128. The pauper, *Joseph Dean*, took a farm in the borough of *Walsall*, and paid the poor rates in his own right, which were charged in these words only, "*Late* Lowbridge's *house*, 2*l.* 6*s.* 0*d.* — 1*s.* 6*d.*"

It is enough if there be a description sufficient to charge the tenant.

Who shall be charged.

R. v. Walsall.

Various other tenements in the said boroughs were charged in the same manner after new inhabitants had come into them, who severally paid the rates for them: This tenement had been so charged ever since one *Lowbridge* left it. The question was, whether this *form of rating* was sufficient to gain a settlement, as there was no doubt of the pauper's having paid the rate?—By *Aston* J. and the Court (Ld. *Mansfield* C. J. being absent): It is agreed that the person must be both rated and pay; and as to the manner *how* he is to be rated, it is clear, that his name need not be inserted in the rate: If the parish have sufficient notice of him, it is enough; paying under rating is equivalent to notice, and the officers have received the rate of this man for two or three years, and therefore must have known him; and it is stated that he *paid in his own right*: And it was determined that he thereby gained a settlement.

But there must be a charge upon him: and if the rate be made in any other way than by name, it must appear that the tenant was notoriously such.

Rex v. *Llangammarch*, *T.* 28 *Geo.* 3. 2 *T. R.* 628. 2 *Nol.* 130. The pauper was removed from *Llanwslyd* to *Llangammarch*, which removal was confirmed at the sessions, to whom it appeared, that the pauper in *May*, 1778, rented a house and land in *Llangammarch* at 5*l. per annum.* No agreement was then made between the landlord and tenant about payment of the taxes. The house is called *Bryn Frwst*, or *Waynllwyd*, and the land is rated to the poor tax in *Llangammarch*, by the name of *Waynllwyd.* The pauper lived one year in the house, but paid no taxes for it. In *September*, 1778, the landlord informed him, that taxes were wanted for his land. The pauper desired the landlord to pay them, and he would repay him the same. In fact, no taxes were ever paid by or demanded from the tenant; but it appeared that the landlord paid the taxes, and that the pauper allowed them. The overseer of *Llangammarch*, who received the taxes from the landlord for this land, knew nothing of the pauper; nor whether or not he resided at this farm at the time. A rule was obtained to shew cause why the order of sessions should not be quashed, and, upon shewing cause, were cited the cases of *Rex* v. *Painswick*, *supra*, and *Rex* v. *Walsall*, *supra*.—*Ashhurst* J. The circumstance stated in this case, that the overseer did not know the pauper, nor whether he resided at this farm, distinguishes it from the cases cited. The ground of determination in *Rex* v. *Painswick*, was the notoriety of the occupancy. For when Mr. J. *Dennison* thought that rating the house only might be sufficient, he added, "for the parish could not but know who was the occupier." That, indeed, is the natural presumption; but we cannot presume against the facts of the case; and here it is expressly stated as a fact, that the overseer knew nothing of the pauper, or whether he resided at this farm. The reason why a party gains a settlement by paying taxes is, because it is an admission by the parish that he is an inhabitant. There is no foundation for the distinction which has been taken between the knowledge of the overseer, and that of the parish at large: for the overseers are the trustees for, and transact the business of, the parish, and they ought to know the state and conditions of the inhabitants. And indeed, if we could presume either way, it would rather be, that the parish even did not know that the pauper resided in his farm.—*Buller* and *Grose* Js. of the same opinion. Rule absolute.

Rex v. *Corhampton*, *H.* 21 *Geo.* 3. *Doug.* 621. *Cald*, 108. 2 *Nol. P. L.* 132. The overseers made a rate for 2*s.* in the pound, in this form, "Rent 4*l.* Q. Certificate. (*a*) Occupier *Richard Goodiff.* Sum assessed ...." The overseers demanded 8*s.* for the rate, declaring he was assessed in that sum for the relief of the poor. *Goodiff* objected, alleging that he was not a parishioner. The overseer opened the rate book, and shewed him his name therein, and threatened to distrain for the 8*s.* if he did not pay it. *Goodiff*, on this, paid the money directly. In the afternoon of the same day, the overseer returned, with the vestry clerk, and offered to return the money, saying he had taken it by mistake. *Goodiff* refused to receive it. The overseer however left it, and went away; on which *Goodiff* threw the money after him. It was objected, that here was no rating. There was no sum put against *Goodiff*'s name. The parish knew he occupied the house, but they never intended to rate him. The mistake of the overseer (and corrected so soon), in supposing him rated when he was not, could not be binding upon the parish.—By Ld. *Mansfield* C. J. There is no question in the case. The title of the rate is, two shillings in the pound; and in the column of rent, *Goodiff*'s rent is 4*l.* This fixes his proportion of the rate. For what purpose was his name inserted, if not to rate him? And besides, he has paid it, and against his will; and he shall not have it in his power to say, upon reconsidering the matter, I have thought better of it, and you shall not gain a settlement.

Landlord paying taxes personally.

(*a*) *i. e.* Quære Certificate.

Rex v. *Coppull*, *M.* 42 *Geo.* 3. 2 *East*, 25. 2 *Nol. P. L.* 133. Removal from *Standish with Langtree* to *Coppull*: and confirmed by the sessions. The respondents proved by the evidence of the pauper, that his father many years ago purchased a small estate for less than 30*l.* in *Coppull*, and occupied it himself, during which time the pauper lived with him as part of his family: the pauper's father during his occupation actually paid the parish rates or assessments in respect of his estate; but the respondents did not produce any rates or assessment, and had not given any notice for the production of any. And it was objected by the appellants that under these circumstances there was no legal or proper evidence that the pauper's father was charged with the same. *Per* Ld. *Kenyon* C. J.—It is impossible to argue that parol evidence may be given of rates which are not produced, nor any notice proved to produce them, nor any reasonable account given for their non-production. The best evidence was not given which the nature of the case would admit of. Both orders quashed.

The rate itself must be produced as evidence of being charged.

(*b*) Of refunding to the Tenant.

Rex v. *Openshaw*, *E.* 4 *Geo.* 3. *Burr. S. C.* 522. 1 *Blac. Rep.* 463. 2 *Nol. P. L.* 131. *James Bowden* settled at *Openshaw*, took a house and two closes at *Gorton*, and the landlord was to pay all taxes and levies but the window tax. The rating was thus, "*Bowden*'s." The landlord himself for some time paid the taxes; but in the last year the landlord having some disputes with the overseers about his assessments, directed the overseers to call upon his tenant *Bowden* for a poor-rate, and a church-rate, and tell him that his landlord ordered him to pay, and he would

Landlord refunding to the tenant the amount of the tax paid, does not prevent the gaining a settlement.

Refunding to the tenant.

R. v. Openshaw.

allow it to him out of his rent. The tenant paid the same, declaring he paid them for his landlord, and the overseer said he accepted them accordingly. But the landlord, not being asked by the tenant to allow it, did not allow it out of the rent till three quarters of a year after he left the estate (which was six days before the order of removal), when he repaid the money. It was objected that in this case the tenant was neither rated nor paid. — By Ld. *Mansfield* C. J. This was a tenant's tax, and he is assessed by name, "*Bowden*'s." The agreement between his landlord and him, that the landlord should pay it, is nothing to the parish.

Salary of a tide waiter, rated to the land-tax.

Rex v. *Okehampton*, *E.* 7 *Geo.* 2. *Burr. S. C.* 5. 2 *Nol. P. L.* 123. 131. A tidewaiter resided in *Kenton* and had a salary; he was rated for this salary to the land-tax in *Kenton*. It was paid for some time by himself, but repaid to him by the collector of the customs; and afterwards was paid by the collector. It was objected, that a taxation without payment gains no settlement: Then the question is, whether he paid his share towards the public taxes and levies of the parish? And it is plain that he has not. For it was not his own money, but the money of the collector. — By Ld. *Hardwicke* C. J. Suppose a landlord has agreed to reimburse his tenant, would not the tenant be settled? This collector did not pay it to exonerate the parish, but to better the man's salary. — And by the Court: It hath been settled, that the land-tax is a parish tax within the act; and his being taxed for his salary makes no difference.

Salary of an excise officer, rated to the land-tax.

Rex v. *Weobley*, *M.* 42 *Geo.* 3. 2 *East*, 68. 2 *Nol. P. L.* 132. Removal from *Weobley* to *New Radnor*, and quashed by the sessions. The pauper resided as an officer of excise in the borough and parish of *W.*, and during such residence was rated to the land-tax in that parish for his salary, which was proved by the production of the land-tax assessment; but it appeared by the evidence of the pauper that he never paid such rate himself, or any rate; the same being paid by the collector of excise, and not deducted out of the pauper's salary. — Ld. *Kenyon* C.J. If the rate had been paid by him through the medium or by the hands of another, that would have been a payment by himself; but here he neither paid it mediately nor immediately. He was not affected by the payment at all. It was not deducted out of his salary, nor was his income diminished by it. This being a new case, where the pauper neither in fact paid the rate himself, nor constructively by the hands of his agent, it is better to abide by the letter and true spirit of the act, and to hold that he did not thereby gain a settlement. Order of sessions quashed.

Salary of a customs office, rated to the land-tax.

Rex v. *Axmouth*, *E.* 47 *Geo.* 3. 8 *East*, 383. 2 *Nol. P. L.* 123. 125. Removal of *Martha Clarke* from *Axmouth* to *Lyme Regis*, and quashed by the sessions. — Case: The pauper's husband, deceased, (*J. Clarke*) was an officer under the custom house of *Lyme Regis*, and stationed at *Axmouth* with a salary of 50*l.*; he resided at *Axmouth*, did the duty of the office there, and was charged 8*l.* *per annum* to the land-tax in respect of his salary of 50*l.* There had been annually an order issued from the treasury, authorizing the commissioners to direct the collectors of the outports to reimburse those officers of the customs whose salaries did not exceed 60*l.* *per annum* the taxes assessed on such salaries and

paid by them. It most frequently happened that *Clarke* was unable to pay the tax assessed on him, until he had received the same from the collector of the customs, and the tax collector of the parish was at such times in the habit of trusting *Clarke* with a receipt, and the collector of the customs upon having this receipt given him paid *Clarke* the said sum, according to the order before mentioned, and *Clarke* paid the same to the tax collector of the parish. In the argument against the order of sessions it was urged that since the land-tax redemption acts (38 *Geo.* 3. *c.* 60. & 39 *Geo.* 3. *c.* 6., *sed vide* 42 *Geo.* 3. *c.* 116. Vol. III. p. 178.) which perpetuate the tax on lands as a charge upon the lands in the parish, and leave the tax on salaries as a mere personal tax, the rating towards, and payment of it, in respect of the latter, no longer satisfied the words of the stat. 3 *W.* 3. *c.* 11. But this the Court immediately over-ruled, stating, that the tax was still a public tax leviable and collected within the parish. — Ld. *Ellenborough* upon the remaining part of the case said, that the case of *Rex* v. *Oakehampton* was not to be distinguished from the present. The land-tax being a public tax within the stat. 3 *W.* 3. *c.* 11., the officer was both charged to it, and paid it within the parish, and nothing more was wanting to give him a settlement there. The case of *Rex* v. *Weobley*, *ante*, 676., was distinguished from the other cases by Ld. *Kenyon*, because there the officer did not pay the tax mediately or immediately; and, as he says afterwards, because the pauper neither *in fact paid* the rate himself, nor constructively by the hands of his agent. As to his being reimbursed afterwards, all the cases agree that that makes no difference, and that is not contradicted by *Rex* v. *Weobley*. — Order of sessions confirmed.

Refunding by the principal to the person rated.

R. v. Axmouth.

(3.) Of the Land-tax.

See the three preceding cases.

And in *Rex* v. *Bramley*, *H.* 9 *Geo.* 2. *Burr. S. C.* 75. 2 *Nol. P. L.* 123. 131. *John Close*, the pauper, after his settlement in *Bramley*, removed with his family, and inhabited and farmed lands at *Armley*, for which he was charged and paid two quarterly payments to the land-tax only. It was urged, that as the land-tax is always allowed or repaid by the landlord, the payment thereof can gain no settlement to the tenant. — By the Court: It hath been a great doubt, whether in this respect the legislature did not mean parochial taxes. But this hath been long gotten over: and the land-tax has been holden to be within the act, from the notice of inhabitancy that arises by the party's being assessed and paying it.

Land tax is a tax within the act.

Rex v. *Mitcham*, *E.* 32 *Geo.* 3. *Cald.* 276. 2 *Nol. P. L.* 129. *John Heard* and his family were removed from *Mitcham* to *Moredon*. The sessions quashed the order and stated the following case: that the pauper inhabited for several years a house at *Moredon*, which he rented of Mr. *Gasson*, who was also an inhabitant there, at the yearly rent of 5*l.* clear of all taxes, parliamentary and parochial. That whilst he so occupied the same, an assessment for the land-tax was made on the said parish of *Moredon*, the title of which was, " *Surrey*, &c. an assessment on the

It may be inferred from the form of rating, who is the person rated; and in the case of land-tax, the presumption is (between the public and the tenant,) that the

Land-tax. "*inhabitants* of the parish of *Moredon*, for raising a sum by a land-"tax," &c. in the following form:—

occupier is the person rated.

Rent.	Landlord's Name.	Tenant's name.	d.
£5 0 0	Mr. *Casson.*	*John Heard.*	9½

That *Heard* paid the said 9*s*. 9½*d*. to the collector who demanded the same. — By Ld. *Mansfield* C. J. the question is, whether the landlord or tenant is the person charged? The assessment does not say who is, but the names of both landlord and tenant are used. The rate alone then in this case is no charge upon either. The answer to this question must, therefore, be gathered from other circumstances. In the first place, who ought to be charged? Undoubtedly the occupier ought. The landlord, it is true, is the debtor, but the rate is pointed at the occupier. The parish cannot tell who is the landlord, or who has a rent charge. It is upon the occupier that the officer of government takes his remedy; and though the landlord is directed to allow the sum levied out of the rent, the parish have nothing to do with the transactions between landlord and tenant: this is a matter between them; but for the sake of the public, the occupier, the ostensible person, is to be considered as the person first liable. The next consideration is, what does the assessment profess to be? It professes to be an assessment on the *inhabitants*, that is, the occupiers; the landlord may or may not be an inhabitant: the tenant must be. Then, of whom is it demanded? Of the occupier. Who pays it? The occupier. We may, therefore, supply from the circumstances that which is omitted in the rate itself; and intend here, that which was expressed in the case of *Rex* v. *Carshalton*, *Burr. S. C.* 809., with which the present decision does not interfere. — Order of sessions quashed. *See Rex* v. *Endon*, *Cald.* 374. *Rex* v. *St. Lawrence*, *Winchester*, *Cald.* 379. *Rex* v. *Folkstone*, 3 *T. R.* 505. *Rex* v. *St. James*, *Bury St. Edmund's*, *Cald.* 385. and *Rex* v. *Bridgewater*, 3 *T. R.* 550. 2 *Nol. P. L.* 132.

A church-rate is a public tax.

A rate made too narrowly is a good rate, for the purposes of a settlement.

Rex v. *St. Beess*, *H.* 48 *Geo.*3. 9 *East*, 203. 2 *Nol. P. L.* 122. 127. Removal of *Sarah Tidyman*, widow, and her four children by name, from *Egremont* to *St. Bees;* and confirmed by the sessions. The pauper's husband occupied a house in *Egremont* till his death. A year after they occupied the house, a churchwarden called at the house for an assessment (generally called in the parish a *couple sess*, but which the pauper *Sarah* understood to be a *church sess*,) and told her that her husband was assessed, and she paid 1*s*. 2*d*. as the sum assessed. Some time afterwards she paid 1*s*. more upon a similar demand made by another churchwarden, And afterwards another shilling was paid, and the assessment was as follows:

"1791. An assessment upon the householders in the parish of "*Egremont*, at 1*s*. *per couple*, for the ornaments and repairs of the "parish church;

	s.	d.
" × *John Tidyman* - - - - - - -	1	0

"We whose names are hereunto subscribed (being of "the church vestry) do allow of this as a regular "assessment; as witness our hands, t of "*March*, 1791."

(Signed by the minister and eight other persons, including the two churchwardens.)

The mark × opposite *Tidyman's* name denoted that he had paid the assessment. It appeared from the churchwarden's accounts of that year entered in the vestry book, that the sums received under that assessment, were in part laid out on the repairs and ornaments of the church, and the rest in payment of a debt due to the preceding overseers. But that assessment being insufficient, another was made in the same year in aid of it, upon the landholders of the parish, who were never assessed, but when the assessment upon the householders proved insufficient. And it was frequently the practice for the select vestry of the parish to make out these assessments, in the form of a list of the names of the inhabitants liable to pay; charging the householders at 1*s.* each, and the widowers and widows, householders, at 6*d.* each; which assessments were afterwards submitted to and approved by the general parish vestry.— In support of the order of sessions, it was said, that the rate was clearly bad, as being made upon the householders only, and not upon the parishioners at large, and therefore no settlement could be gained by being assessed to and by paying it. — But Ld. *Ellenborough* C. J. said, that if a public tax were laid too narrowly, it was not less a public tax on that account. That this was a *tax*, and it was *public*, and it was *charged* and *paid* within the parish. — And he asked what else was required to meet the act of parliament? (3 *W.* 3. *c.* 11. *s.* 6.) Order of sessions quashed. *What shall be deemed public taxes.* R. v. St. Bees.

Of the public taxes or levies of the said town or parish.] By stat. 9 *Geo.* 1. *c.* 7. § 6. No person who shall be assessed to the *scavenger's* rate, or to the repairs of the *highways*, and shall duly pay the same, shall be deemed to be settled thereby. Scavengers and Highways.

T. 9 *An. Set. & Rem.* 1. Paying to the *county bridge* gains no settlement, for there all the county is liable, and he pays as one of the county, and not as an inhabitant of the parish or town where he lives. County bridges.

But perhaps the case may be altered in this respect, since the stat. 12 *Geo.* 2. *c.* 29., which charges a sum certain upon every division in proportion to their poor-rate, towards the repair of bridges and other county expences, brought together by the said act into one general county rate, which before were collected separately, and (with respect to bridges) charged by the justices upon every individual; whereas now, if a man pays to the county rate, he eases the division where he is assessed, and pays off so much as his assessment comes to. And there is in this case the same notoriety of his inhabitancy as in the case of the poor rate.

(4.) Of Stat. 35. Geo. 3. c. 101.

However, stat. 35 *Geo.* 3. *c.* 101. § 4., provides and enacts, that no person or persons whatsoever, who shall come into any parish, township or place, shall gain a settlement in such parish, township, or place by being charged with and paying his, her, or their share towards the public taxes or levies of the said parish, township, or place, for and on account or in respect of any tenement or tenements not being of the yearly value of 10*l.* The mode of gaining a settlement therefore by rating and paying public taxes obtains no longer, for if the tenement be of 10*l.*, a settlement arises thereby, 35 G. 3. c. 101. § 4. No person to gain a settlement by paying taxes for a tenement of less than 10l. yearly value.

35 G. 3. c. 101. so that such is the point to be ascertained, for if it be less it is immaterial what public impositions are sustained in respect thereof. But we have retained the title because questions may yet arise as to settlements gained by this mode previous to the passing of stat. 35 *Geo.* 3.

Settlement by being rated and paying taxes, how proved.

In *Rex* v. *Coppull*, *M.* 42 *Geo.* 3. 2 *East*, 25. *ante*, 675., it was holden that a settlement by being rated and paying taxes, cannot be proved by evidence of paying only, without the production of the rate, or accounting reasonably for the non-production of it, although the payer was both the owner and occupier of the estate for which he paid the rate.

43 G. 3. c. 161. By stat. 43 *Geo.* 3. *c.* 161. § 59. Persons assessed to and paying the duties on houses and windows, or any of the assessed taxes, shall not thereby gain a settlement. And one reason may be, because they do not thereby contribute any thing to the public stock of the parish.

§ XIV. Of the Acknowledgment of Settlement by Certificate.

Certificate, relief, and removal unappealed against were, in a few of the later editions, inadvertently considered as methods of *gaining* a settlement: they are evidently nothing more than evidence or admission of settlement previously gained.

Of Certificates; and herein,

(1.) *Of their form.*
(2.) *Of their delivery.*
(3.) *Of the persons protected by them.*
(4.) *To what individuals they extend.*
(5.) *Of their effect.*
(6.) *Of their continuance.*
(7.) *Of removing certificated persons.*
(8.) *Of apprenticeships as affected by certificates, both under the stat. of* W. 3. *and the* 33 Geo. 3. c. 54.

35 G. 3. c. 101. Although stat. 35 *Geo.* 3. *c.* 101., by rendering no one removeable till he or she become *actually chargeable*, has made it no longer necessary to grant certificates; yet as the parish officers retain the power to certify, as heretofore, that any particular person is a parishioner of their parish, and as questions upon the subject will probably arise occasionally upon certificates yet existing, it is necessary to retain the law upon this subject; at the same time the reader should recollect the alteration effected by stat. 35 *Geo.* 3. *c.* 101.

8 & 9 W. c. 30. Persons coming to inhabit in any parish or place, and bringing with them a certificate under the churchwardens' hands, &c. owning them to

By 8 & 9 *W.* 3. *c.* 30. § 1., reciting, Forasmuch as many poor persons chargeable to the parish, township, or place where they live, merely for want of work, would, in any other place where sufficient employment is to be had, maintain themselves and families, without being burthensome to any parish, township, or place, but not being able to give such security as will or may be expected and required upon their coming to settle themselves in any other place, are, for the most part, confined to live in their own parishes, townships, or places, and not permitted

to inhabit elsewhere, though their labour is wanted in many other places, where the increase of manufactures would employ more hands; it is enacted, *that if any person or persons whatsoever, after the 1st of May, 1697, shall come into any parish or other place, there to inhabit and reside,* shall at the same time, procure, bring, and deliver to the churchwardens or overseers of the poor of the parish or place, where any such person shall come to inhabit, or to any or either of them, a certificate, under the hands and seals of the churchwardens and overseers of the poor of any other parish, township, or place, or the major part of them, or under the hands and seals of the overseers of the poor of any other place where there are no churchwardens, to be attested respectively by two or more credible witnesses, thereby owning and acknowledging the person or persons mentioned in the said certificate to be an inhabitant or inhabitants legally settled in that parish, township, or place, every such certificate having being allowed of, and subscribed by two or more of the justices of the peace of the county, city, liberty, borough, or town corporate, wherein the parish or place, from whence any such certificate shall come, doth lie, shall oblige the said parish or place to receive and provide for the person mentioned in the said certificate, together with his or her family, as inhabitants of that parish, whenever he, she, or they shall happen to become chargeable to, or be forced to ask relief of the parish, township, or place to which such certificate was given; and then, and not before, it shall and may be lawful for any such person, and his or her children, though born in that parish, not having otherwise acquired a legal settlement there, to be removed, conveyed, and settled in the parish or place from whence such certificate was brought.*

8 & 9 W. c. 30.

be inhabitants of such other parish, the said other parish to provide for them whenever they ask relief of the parish to which such certificate was given. Explained by 9 & 10 W. 3. c. 11. & 12 Ann. stat. 1. c. 18. § 2. Such witness to swear to the execution of certificates, &c. by 3 G. 2. c. 29. § 8.

* *Sic.*

And shall not be removed before.

By stat. 9 & 10 *W. c.* 11., reciting stat. 8 & 9 *W. c.* 30. § 1. and that doubts had arisen by what act persons coming to inhabit *or* reside within any parish under such certificates, might procure a legal settlement, it is enacted, that *no person or persons whatsoever, who shall come into any parish by any such certificate, shall be adjudged by any act whatsoever to have procured a legal settlement in such parish, unless he or they shall really and* bonâ fide *take a lease of a tenement of the yearly value of ten pounds, or shall execute some annual office in such parish, being legally placed in such office.*

9 & 10 W. c. 11.

By stat. 12 *An. st.* 1. *c.* 18. § 2. after reciting stat. 8 *&* 9 *W.* 3. *c.* 30. *It is enacted, that if any person whatsover, who, upon or after the 24th of June, 1713, shall be an apprentice, bound by indenture to, or shall, upon or after the said 24th of June, 1713, be a hired servant to, or with any person whatsoever, who did come into or shall reside in any parish, township, or place, in that part of G. B. called England, by means or licence of such certificate, and not afterwards having gained a legal settlement in such parish, township, or place, such apprentice, by virtue of such apprenticeship, indenture, or binding, and such servant by being hired by, or serving as a servant, as aforesaid, to such person, shall not gain or be adjudged to have any settlement in such parish, township, or place, by reason of such apprenticeship or binding, or by reason of such hiring or serving therein; but every such apprentice and servant shall have his and their settlements in such parish, township, or place, as if he or they had not been bound apprentice or ap-*

12 Ann. stat. 1. c. 18.

After 24 June, 1713, any person bound apprentice, or being a hired servant to one who came into a parish by certificate, shall not gain a settlement there by reason of such apprenticeship, &c.

12 Ann. stat. 1. c. 18.

prentices, or had not been an hired servant or servants to such person as aforesaid; any act or acts of parliament to the contrary notwithstanding.

3 G. 2. c. 29. Witnesses to certificates of settlements to swear that they saw the churchwardens, &c. sign them.

And by stat. 3 *Geo.* 2. *c.* 29. § 8. *To prevent disputes, which often happen, touching the proof of certificates given by the officers of any parish or place, acknowledging any person or persons, therein named, to be an inhabitant or inhabitants legally settled in such parish, town, or place, by virtue of stat.* 8 *&* 9 *W.* 3. *c.* 30., *and for making such certificates more effectual; it is enacted, that after the 24th of June,* 1730, *the witnesses, who attest the execution of such certificates by the churchwarden or churchwardens, overseer or overseers, signing and sealing the same, or one of the said witnesses shall make oath before the justices of the peace, who by the said act are directed to allow the same (which oath they are hereby authorised to administer), that such witness or witnesses did see the churchwarden or churchwardens, overseer or overseers, whose names and seals are thereunto subscribed and set, severally sign and seal the said certificate, and that the names of such witnesses attesting the said certificate are of their own proper hand-writing; which said justices of the peace shall also certify that such oath was made before them; and every such certificate so allowed, and oath of the execution thereof so certified by the said justices of the peace, shall be taken, deemed, and allowed, in all courts whatsoever, as duly and fully proved, and shall be taken and received as evidence, without other proof thereof; and that all certificates given in pursuance of the said act, before the said 24th of June,* 1730, *shall be also taken and allowed in all courts as evidence, without other proof: provided the same are duly allowed by two justices of the peace, as by the said act is required.*

The Form of which Certificate may be this:

To the Churchwardens and Overseers of the poor of the parish of *Penrith*, in the county of *Cumberland*.

WE the churchwardens and overseers of the poor of the parish of Orton, *in the county of* Westmorland, *do hereby certify, own, and acknowledge, that* A. L., *yeoman, is an inhabitant legally settled in our parish of* Orton *aforesaid. In witness whereof we have hereunto set our hands and seals, the ——— day of ———, in the year of our Lord ———.*

Attested by
A. W.
B. W.

A. B. } *Churchwardens.*
C. D. }
E. F. } *Overseers of the poor.*
G. H. }

We J. P. *and* K. P. *esquires, two of his majesty's justices of the peace in and for the said county of* Westmorland, *do allow of the above written certificate. And we do also certify, that* A. W. *one of the witnesses who attested the same, hath this day made oath before us, the said justices, that he the said* A. W. *did see the churchwardens and overseers of the poor of the parish of* Orton *aforesaid, whose names and seals are thereunto subscribed and set, severally sign and seal the same; and that the names of* A. W. *and* B. W.

who are the witnesses attesting the said certificate, are respectively of their own proper hand writing. Given under our hands this ——— day of———.

Form of certificates.

(1.) Of the Form of Certificates.

In the case of *Rex* v. *St. Ives, H.* 3 *Geo.* 2. 2 *Sess. Ca.* 153. 2 *Bott*, 561. 2 *Nol. P.L.* 165. A *mandamus* was moved for, to compel the churchwardens and overseers to sign a certificate; but the Court rejected the motion as a very strange attempt.

A parish is not compellable to grant a certificate.

The statute doth not require any particular direction: and therefore it is equally effectual, whether addressed to any particular place, or addressed in general terms, or not addressed at all, provided it contains an acknowledgment of the settlement of the persons certified for. As in the case of *Rex* v. *St. Nicholas* in *Harwich, H.* 15 *Geo.* 2. 2 *Stra.* 1163. *Burr. S. C.* 171. 2 *Bott*, 562. 2 *Nol. P. L.* 173. The pauper came into the parish of *St. Nicholas* in *Harwich*, with a certificate from *Woolverstone, addressed* to the parish of *Harwich, near Dover Court.* The sessions were of opinion, as there was a mistake in the name of the parish in the address of the certificate, that *Harwich* could not be obliged to receive the pauper. But upon debate in the Court of King's Bench, it was ruled they were: For it is not to be considered as a certificate to any particular parish, but as a general acknowledgment of his being a parishioner of *Woolverstone*, and is conclusive against them for all the world.

A misdirection will not vitiate it, neither will it be bad for non-direction.

A certificate was directed "*To the churchwardens and overseers of the poor of the parish of Holy Trinity, or any other parish in the city and county of* Coventry," this certificate was held to be valid. A certificate need not be directed to the particular parish to which it is delivered; *Per* Ld. *Kenyon* C. J. in *Rex* v. *Lillington, E.* 41 *Geo.* 3. 1 *East*, 438. 2 *Bott*, 571. 2 *Nol. P. L.* 173.

Certificate need not be directed to the parish to which it is delivered.

Neither is it necessary that it be directed to any parish in particular. But *per* Ld. *Kenyon* C. J. a certificate is not a transferable instrument from one parish to another; for then it would operate as a licence for vagrancy. That is, after it has performed its office in one parish, it cannot be taken to another for the same purpose; and so from parish to parish as often as the certificated person shall choose to remove himself. *S. C.*

Nor to any parish in particular.

But it cannot be transferred from parish to parish.

In *Rex* v. *Lubbenham*, (*post*, 697.) Ld. *Kenyon* C. J. said, there must be a particular parish in contemplation at the time of granting the certificate.

And there must be a particular parish in contemplation at the time.

It has been decided in *Rex* v. *Tamworth, E.* 14 *Geo.* 3. *Burr. S. C.* 770. 2 *Bott*, 564. 2 *Nol. P. L.* 167., and in other cases, that in conformity with stat. 8 & 9 *W. c.* 30. a certificate must be signed by a majority of churchwardens and overseers, or it is void.

Must be signed by majority of churchwardens and overseers.

In *Rex* v. *Margam, E.* 27 *Geo.* 3. 1 *T.R.* 775. 2 *Bott*, 565. 2 *Nol. P. L.* 167. the same point was determined.

Rex v. *Clifton, H.* 42 *Geo.* 3. 2 *East*, 168. 2 *Bott*, 573. 2 *Nol. P. L.* 168, 169. The appointment of one overseer alone for a township is bad in law, and a certificate granted by such overseer cannot avail; for by the stat. of *Eliz.* the churchwardens and not less than two substantial householders, are re-

When signed by one churchwarden and one overseer out of four churchwardens and two overseers, it is void.

R. v. Clifton.

And also by one overseer of a township.

quired to be nominated overseers. The stat. of *W.* directs it shall be made by the churchwardens and overseers, or the major part of them; or where there are no churchwardens, by the overseers; and a certificate like the present is not granted by either one or the other of those descriptions of persons. The 13 & 14 *C.2.* requires at least two persons to be appointed overseers for a township. Therefore this latter stat. requiring two to be appointed, and the stat. of *W.* having required the certificate to be executed by the overseers where there are no churchwardens, and there having been but one overseer appointed by the township by whom this certificate was granted, I am of opinion that this was void. Per *Grose* J.

51 G. 3. c. 80. Certificates heretofore signed by two persons only, acting as churchwardens, &c. valid.

In *Rex* v. *St. Margaret's, Leicester, E.* 47 *Geo.* 3. 8 *East*, 332. *Bott, Cont.* 22. 2 *Nol. P. L.* 167, 168. A certificate signed by two churchwardens, one of whom was sole overseer, was decided to be a nullity. To remedy which inconvenience it is enacted by stat. 51 *Geo.* 3. *c.* 80. § 1.(*Vide ante*, p.456.) that all "certificates of the settlements of poor persons, which have been heretofore executed and signed by two persons only, acting or purporting to act in the capacity of churchwardens as well as of overseers of the poor, and also all such certificates as shall hereafter be so signed, shall be considered as good, valid, and effectual, as if the same had been executed and signed by distinct persons as churchwardens and distinct persons as overseers of the poor." § 2. Provides that nothing in this act contained, shall extend to do away or alter any decision which may have taken place in any court of law, respecting the settlement of any poor person before the passing of this act.

Act not to affect any prior decision in any court.

Vide ante, § IX., p. 454., and Vol. I. *tit.* Apprentices, p. 144.

54 G. 3. c. 107.

And by stat. 54 *Geo.* 3. *c.*107., after reciting that whereas by stat. 8 & 9 *W.* 3. *c.*30. it is enacted, that persons coming to inhabit in any parish, township, or place, shall bring with them a certificate under the hands and seals of the churchwardens and overseers of the poor, or the major part of them, of some other parish, township, or place, thereby owning and acknowledging the person or persons mentioned in the said certificate, to be an inhabitant or inhabitants legally settled in that parish, township, or place: and whereas divers parishes contain within themselves several townships, hamlets, or chapelries, each of which separately maintains its own poor: and whereas in such parishes the churchwardens are for the most part sworn into their offices as churchwardens of the whole parish, although in truth and in fact they act as churchwardens of the separate townships, hamlets, or chapelries therein contained: And whereas divers certificates of the settlements of poor persons, have heretofore been signed and executed by a person or persons styling himself or themselves, and stated in such certificates, to be churchwarden or churchwardens, chapelwarden or chapelwardens of the township, hamlet, or chapelry, granting such certificate: and whereas such person or persons have not been sworn into the office of churchwarden or chapelwardens of such township, hamlet or chapelry, but of churchwarden of the parish wherein such township, hamlet, or chapelry is contained:" It is therefore enacted, *that all certificates of the settlements of poor persons, which have been heretofore signed and executed, or which shall hereafter be signed and*

Certificates of settlement made valid,

executed by a person or persons, who at the time of his or their signing and executing such certificate of settlement, acted as churchwarden or churchwardens, chapelwarden or chapelwardens, of the township, hamlet, or chapelry, granting such certificate of settlement, shall be deemed and taken to be as good, valid, and effectual, as if the same had been signed and executed by a person or persons actually sworn into the office of churchwarden or chapelwarden of such township, hamlet, or chapelry: provided always, that such person or persons shall have been duly sworn into the office of churchwarden of the parish wherein the township, hamlet, or chapelry, granting such certificate, be contained, or into the office of churchwarden or chapelwarden of such township, hamlet, or chapelry.

Signing of certificates by churchwardens and overseers, although the churchwardens, &c. were not sworn in.

§ 2. *Enacts, that all certificates of the settlement of poor persons, which shall have been heretofore signed and executed, or which may hereafter be signed and executed by the overseers of the poor of any township, hamlet, chapelry, or place, and the churchwarden or churchwardens, chapelwarden or chapelwardens, acting for or appointed in respect of such township, hamlet, chapelry, or place, or the major part of them, shall be deemed and taken to be as good, valid, and effectual as if the said certificates had been signed and executed by such overseers and the churchwardens of the parish wherein such township, hamlet, chapelry, or place is situate, or the major part of them.*

Such certificates to be valid if executed by the overseers of the poor of any township, &c.

§ 3. *Provides, that nothing herein contained shall be construed to alter, impeach, or affect the settlement of any person, for whose removal any order of justices shall have been duly made before the passing of this act.*

Not to affect settlements.

Rex v. *The Inhab. of Catesby, E.* 1824. 2 *B. & C.* 814. 1 *Nol. P. L.* 505. Removal of *George Cox*, his wife and child, from the parish of *Badby*, in the county of *Northampton*, to the parish of *Catesby* in the same county, the sessions confirmed the order, subject, &c. Case: The respondents produced a certificate, dated the 10th of *May*, in 1761, stating that *William Goodman*, the only churchwarden, and *Edward Webb*, the only overseer of the poor of the parish of *Catesby*, in the said county of *Northampton*, did thereby certify the churchwardens and overseers of the poor of the parish of *Badby*, in the said county of *Northampton*, that they did own and acknowledge *Thomas Cox* the younger, of *Badby* aforesaid, butcher, and *Mary* his wife, and *Richard*, *John*, and *Elizabeth*, their children, to be inhabitants legally settled in their said parish of *Catesby*. The certificate then proceeded in the usual form, and purported to be duly executed by the churchwarden and overseer, and was allowed by two justices of the peace. It was proved that *Thomas Cox*, in the certificate mentioned, had a son named *Thomas*, who was born after the certificate was granted, and that the pauper *George* was the son of the last-mentioned *Thomas*.—In support of the order of sessions *Rex* v. *Hinckley*, 12 *East*, 361. *ante*, § IX., (5.), *Rex* v. *Earl Shilton*, 1 *B. & A.* 275. *ante*, § IX. (3.) and *Rex* v. *Clifton*, 2 *East*, 168. *ante*, p. 683. were cited; first, that two overseers were originally appointed at *Easter*, or within one month after. Secondly, that one of these overseers died before the 20th *May*, the date of the certificate; and, thirdly, that no other had been appointed at that time. The overseer so sup-

A parish certificate, purported to be granted in 1761 by *A.*, the only churchwarden, and *B.*, the only overseer of the parish: Held, that it must be taken to have been a good certificate, because it may be intended in favour of such an instrument, that by custom there was only one churchwarden in the parish, and that two overseers had been originally appointed, but that one of them died, and that the certificate was granted before the va-

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cancy in the office was filled up.

posed to have been dead on the 20th *May*, must have been alive at the latter end of *March* or the beginning of *April*, (if he was appointed on *Easter* day,) or within one month afterwards. The presumption of law is, that he continued alive at the time when the certificate was granted. But supposing him to have died soon after his appointment, another might have been appointed by two justices, under stat. 17 *Geo.* 2. *c.* 38. § 3. Until the vacancy was filled up there was not a body of officers existing capable of granting the certificate. There must be two overseers to execute the functions delegated to that body. — *Bayley* J. I am of opinion, both upon the authorities cited and upon the principles to be deduced from them, that this is a good certificate. It is signed by one churchwarden and one overseer only; and it is said that by law there must be two overseers at least, and two churchwardens, and, therefore, that this certificate is not signed by a majority of the overseers and churchwardens, as required by law. There are two statutes which bear upon this subject, the 43 *Eliz.* c. 2. and the 8 & 9 *W.* 3. *c.* 30. The first section of the 43 *Eliz.* *c.* 2. § 1. requires that there should not be more than four nor less than two overseers of every parish. Section 5. authorises the said churchwardens and overseers, *or the greater part of them*, to bind poor children apprentices, &c. The 8 & 9 *W.* 3. *c.* 30. § 1. directs that a parish certificate should be under the hands and seals of the churchwardens and overseers, or *the major part of them*. Both these acts require the concurrence of the churchwardens and overseers, or the greater part of them. The decisions, therefore, which have taken place upon the 43 *Eliz.* § 5. with respect to binding out poor apprentices are applicable to cases arising upon certificates under the 8 & 9 *W.* 3. *c.* 30. § 1. In *Rex* v. *Hinckley* (12 *East*, 351. § IX. *ante*, p.5), an objection was taken to a parish indenture that it was signed only by one churchwarden and one overseer. The Court, however, held, that if by any intendment of law the indenture could be good, that intendment ought to be made, and they did intend that as, by custom, there might be only one churchwarden in a place, there were only one churchwarden and two existing overseers at the time when the indenture was executed, and, therefore, that the two who did execute were a majority sufficient to bind the apprentice. Generally speaking, there ought to be two churchwardens in every parish; but by custom there may be one. By law, two overseers must be originally appointed; but the two overseers so appointed may by death have been reduced to one, and in that case one overseer and one churchwarden would constitute the major part of the persons originally appointed. I think, therefore, that in this case, we may intend that at the time when this certificate was granted, *Webb* was the surviving overseer of two who had been originally appointed. This case differs from that of *Rex* v. *St. Margaret's, Leicester* (3 *East*, 332. *ante*, p. 684.), because there it was stated as a fact in the case, that one overseer only had been originally appointed. So in *Rex* v. *Clifton* (2 *East*, 168. *ante*, p. 683.), it was found that at the time of granting the certificate, *Warrington* was the only overseer appointed for the township. The cases of *Rex* v. *Hinckley* and *Rex* v. *Earl Shilton* (1 *B.* & *A.* 275.), establish that a binding of a poor apprentice by one overseer and one churchwarden may

be good. Besides the general rule of law as to presumption, is, that a thing is not to be presumed *non rite actum*, and as the law absolutely requires an appointment of two overseers in the first instance, we ought in the absence of any evidence to shew what the real appointment was, to presume that the parties had conformed to the law, that two overseers had been originally appointed, and that one had died before the certificate was granted; and if we make that presumption, then the certificate must be taken to have been granted by the majority of the churchwardens and overseers, as required by the statute. For these reasons, I think that the order of sessions ought to be confirmed. — *Holroyd* J. I am of opinion, both upon the authorities cited and upon principles of law which ought to govern this case, if those authorities had not existed, that this is a good certificate, or rather that the justices might legally intend it to be a good certificate. It has been submitted to by the parish for a period of sixty years. If any intendment, therefore, can be made to support it, it ought to be made. Now, as by law, two overseers must have been originally appointed, the instrument could not correctly describe *Webb* as an overseer, unless he had been appointed jointly with another. The presumption to be raised, therefore, is only in favor of what is stated on the face of the certificate. If upon the trial of an issue, whether *Webb* was an overseer of the parish of *Catesby* or not, it had been proved that he was the only person appointed to the office of overseer for that year, the jury must have found that he was not an overseer at all, because the law requires that there should not be less than two overseers originally appointed. The certificate, therefore, would have been bad, notwithstanding the length of time during which it had been submitted to by the parish. I am of opinion, that in favor of what appears on the face of the certificate, the justices were well warranted in drawing the inferences that two overseers had been originally appointed, and that one had died before the certificate was granted. The authorities cited in the argument fully establish that every intendment ought to be made in favor of the certificate; but independently of those authorities, I think, that upon established principles, the sessions have drawn the proper conclusion. — *Littledale* J. It appears on the face of the certificate that it was granted by only one churchwarden and one overseer. Now that is not sufficient, unless the law warrants the intendment of some facts, by means of which one churchwarden and one overseer may at that time have been the majority of the churchwardens and overseers. Now, by custom, there may be only one churchwarden, and therefore in this case, we may presume that one only was appointed. The appointment of one overseer would be illegal, and therefore we must intend that two were originally appointed, and that one of them had died before the certificate was granted, and that no other had been then appointed in his stead; and if we may intend those facts, then the certificate was granted by a majority of the body. It is a general intendment of law, that every thing is to be presumed rightly done unless the contrary appear. It is also an intendment of law, that a party who has been proved to have been alive at a given date, is presumed to be alive for a certain period afterwards unless the contrary be shewn. These two in-

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tendments clash in this particular instance; but I think that, in favor of what appears on the face of the certificate, the more general intendment ought to prevail. In *Rex* v. *Earl Shilton*, there could not be any such intendment, because it was shewn on the face of the case that the appointment originally was bad. It lies upon the party insisting that it is void to prove that it is so. In *Rex* v. *Morris* (4 *T. R.* 550.), an order of justices appointed *A.*, of the parish of *B.*, to be overseer of the poor of the hamlet of *C.*, was held to be a good appointment: and Lord *Kenyon* expressly lays it down, that every thing is to be intended in support of an order of justices. Upon the same principle, I think that every thing ought to be intended in favour of a certificate sanctioned by two justices, and therefore that the order of sessions was right. Order of sessions confirmed.

1 & 2 G. 4. c. 32.

* *Sic.*

Certain indentures and certificates of apprenticeship declared valid.

Stats. 1 & 2 *Geo.* 4. *c.* 32. after reciting that "Whereas in divers parishes, townships, hamlets, chapelries, and places in *England*, for a long period of time, only one churchwarden or chapelwarden has been annually appointed, where two or more churchwardens or chapelwardens had been formerly been* appointed for each of such parishes, townships, hamlets, chapelries, or places: And whereas divers indentures for the binding of parish apprentices, and certificates of the settlements of poor persons, which may have been executed and signed by such single churchwarden or chapelwarden, acting in and for a parish, township, hamlet, or place for which formerly two or more churchwardens or chapelwardens had been appointed, may on that account, if contested in a court of law, be deemed to be null and void: And whereas much litigation has recently arisen between parishes, owing to the discovery of such defect as above-mentioned in the appointment of churchwardens and chapelwardens; and it would tend to prevent further litigation, if such indentures and certificates as before-mentioned were in certain cases declared to be valid and effectual:" Enacts, that from and after the passing of this act (*viz.* 28th *May*, 1821.) all *indentures for the binding of parish apprentices*, and *certificates of the settlement or settlements of poor persons*, which have been, previous to the passing of this act, executed or signed by one churchwarden or chapelwarden, acting or purporting to act in the capacity of churchwarden or churchwardens, chapelwarden or chapelwardens, for any parish, township, hamlet, chapelry, or place in *England*, for which two churchwardens or chapelwardens had formerly been appointed, shall be deemed and taken to be as good and effectual to all intents and purposes as if the same indentures or certificates had been executed by one or more churchwarden or chapelwarden, churchwardens or chapelwardens, legally appointed.

The certificate is to be signed by two justices; but they are not *obliged* to sign it.

Rex v. *Wooton St. Lawrence*, *H.* 8 *Geo.* 3. *Burr. S. C.* 581. 2 *Bott*, 563. 2 *Nol. P.L.* 170. The parish officers of *St. Lawrence* gave to *Thomas Pryor*, the pauper, a common printed form of a certificate, acknowledging him to be settled in the said parish of *St. Lawrence*. It was signed and sealed by the parish officers, and attested by two witnesses. But the blanks for the allowance of justices were not filled up, and no name of any justice signed thereto. On his return to the parish granting the certificate, they relieved him until the time of his removal. — By Lord *Mansfield* C. J. and the Court: A certificate cannot conclude the

parish, unless properly signed. The certificate act specifies certain checks and guards upon certificates. The justices are not obliged ministerially to allow and sign a certificate; they have a discretion to allow it, or not to allow it, if it be liable to objection. The act requires a conclusive certificate to be under the checks and guards therein particularised. This certificate wants them; therefore it is no certificate within the act. And if it be not a certificate within the act, it cannot conclude the parish.

Signing of certificates by justices.

In *Rex* v. *Boston*, *E.* 4 *Geo.* 3. 2 *Bott*, 561. 2 *Nol. P. L.* 170, 171. It was decided that the justices who allowed the certificate, might also attest as witnesses; but that it must appear upon the certificate that they took upon them to act in both capacities.

The justices who sign may be the witnesses.

Rex v. *Netherthong*, *H.* 54 *Geo.* 3. 2 *M. & S.* 337. Upon appeal to the quarter sessions for the West Riding of *Yorkshire*, against an order of removal from the township of *Netherthong* to the township of *Honley*, the respondents called a person, who was a rated inhabitant, and overseer of the poor of the township of *Netherthong*, who produced a certificate, dated in the year 1756, from *Honley* to *Netherthong*, acknowledging the pauper's grandfather and father to belong to *Honley*. The appellant's counsel objected that before such certificate could be received and read in evidence, some account must be given of it, and whence it came, which he contended the witness was not competent to give, on account of his being a rated inhabitant of *Netherthong;* and the Court being of that opinion, refused to permit the witness to give evidence, and discharged the order, subject to the opinion of the Court of K. B., whether such evidence ought to have been received. When this case was called on, the counsel in support of the order of sessions, admitted that after the decision of *Rex* v. *Ryton*, (*post*, 691.) he could not sustain the ruling of the sessions; but he prayed that the case might be remitted to be heard on the merits.—Ld. *Ellenborough* C. J. I remember upon the trial of an action for a false return to a *mandamus*, a corporator was called to produce some of the corporation muniments, and objection taken to his admissibility. But Ld. *Kenyon* said, that he should hold him capable, as a depositary of the muniments, of being brought forward for the purpose of producing them, and that if the party objecting wished to enquire as to the custody he might, and that he would receive the evidence. If the parties choose to stand on such a point as this, it may be as well that they should abide by it. Order of sessions quashed.—*Scarlett*, who was against the order, mentioned the stat. 3 *Geo.* 2. *c.* 29. § 8., *ante*, p. 682. which directs that a certificate, after it has been allowed, and the oath of its execution certified by the justices, shall be evidence without further proof.

A parish certificate of more than thirty years' date, acknowledging the pauper's grandfather and father to belong to the appellant parish, produced by a rated inhabitant who was overseer of the respondent parish, was held to be evidence, though it was objected that some account should be given of it, and that the witness was not competent to give that account; and it seems that if necessary he might be examined as to the custody.

Rex v. *Debenham*, *M.* 59 *Geo.* 3. 2 *B. & A.* 185. 2 *Nol. P. L.* 193. Removal from the parish of *Debenham* to the parish of *Kenton* in the county of *Suffolk*. The sessions quashed the order, subject to the opinion of the Court of K. B. on the following Case:— The pauper had gained a settlement by hiring and service in the parish of *Debenham*, unless it could be shewn that his father at the time resided in that parish under a certificate from the parish of *Kenton*. It was proved that no such certificate could be found in the custody of *Debenham*. The pauper's father, *James Driver*,

On an appeal, the respondent in order to prove the fact of the delivery to them of a certificate given by the appellants, acknowledging the pauper to be

R. v. Debenham. — their settled inhabitant, produced an old book from their own parish chest, in which was an entry of that fact in the hand writing of a former parish officer: Held, that such evidence was inadmissible.

proved that in the year 1771, having been removed from *Debenham* to *Kenton*, the parish officers of *Debenham* refused to allow him to return unless *Kenton* would grant him a certificate; to this the parish officers of *Kenton* consented. An order for granting this certificate was made at the quarterly meeting of the directors and guardians of the incorporated hundreds of *Loes* and *Wilford* (in which *Kenton* is situated), as appeared by an entry in the minute book of the proceedings of the hundred-house quarterly meetings dated 20th *March*, 1771. And to prove that such certificate was delivered to the respondent parish in pursuance of such order, a book was produced from the parish chest of *Debenham*, on the outside of the cover was "Certs. Recd. Bonds do. Coppys of Orders, 1756." This book contained memorandums of orders of removal, of bonds, and certificates received. The certificates were regularly numbered, and under the title of certificates received was the following entry, dated 1771, "No. 88. *John Polkins* from *Kenton*. — No. 89. *James Driver*, do." There were a variety of other certificates subsequently entered. The sessions were of opinion that this book was not admissible in evidence. After argument, *Abbott* C. J. The principles of the law of evidence in this country are founded on the strongest sense, and soundest reasoning. It is of the first importance to preserve them strictly; inasmuch as they are the great safeguards of the subject, in the administration of justice in all cases, from those involving property of the most trifling amount, to those where the life of an individual is at stake. I should, therefore, be extremely unwilling to come to any decision which should break in upon any established principle. It is an established principle, that nothing said or done by a person having at the time an interest in the subject matter, shall be evidence either for him or persons claiming under him. Now the entry in this book is of that description; for it is made by a person having an interest to make it, inasmuch as it is produced as proof of the delivery of a certificate by which the parish of which the party making an entry is an inhabitant, is to be relieved from the burden of maintaining the individual named in the certificate. I think, therefore, that the safest course which the Court can pursue will be to hold, that the sessions were justified in rejecting this evidence. There are, however, in this case, other circumstances from which the sessions may draw the conclusion (if they shall think fit so to do) that the certificate was in fact delivered. I think, therefore, that the case should go back to be reheard upon that point. — *Bayley* J. I am entirely of the same opinion, that the entry in this book was not evidence, the effect of it being to advance the interest of the person who made it. — *Holroyd* J. concurred. Case sent back to the sessions to be reheard.

As to the sealing.

Rex v. *Austrey*, *E.* 1817, *Phill. Ev.* 453. 2 *Nol. P. L.* 167.—The question was, whether a certificate signed by two churchwardens and one overseer, but bearing only two seals, was a legal and valid certificate under the stat. 8 & 9 *W.* 3. *c.* 30. (which requires certificates to be under the hands and seals of the churchwardens and overseers, or the major part of them, or under the hands and seals of the overseers, where there are no churchwardens); the Court determined that the certificate had not been properly executed. The facts of the case were shortly as follow: The

certificate was duly attested, and allowed by magistrates, and purported to be the certificate of *A. B.* and *C. D.* churchwardens, and of *E. F.* overseer; one seal was opposite to the two first names and the other seal opposite to the last; no trace of any other seal appeared on the instrument, and the certificate was above thirty years old. — Ld. *Ellenborough* C. J. in delivering the judgment of the Court, said, "In considering how far the cases of deeds are applicable to the present, it is to be recollected, that in those cases the parties alone, under whose authority the deeds were executed, are bound by them. But the present is the case of the execution of a power, which binds and operates upon other persons at their peril, and subjects them to indictments as for crimes, in case of their disobedience to the power, if it be duly executed. In the execution of powers, all the circumstances required by the creators of the power, however unessential and otherwise unimportant, must be observed, and can only be satisfied by a strictly literal and precise performance. — In the presnt case, where an act is to be under the hands and seals of the three, a mere actual sealing by any of the three appears to us not sufficient; but it ought to be under the actual distinct seal of each, that is to say, under a distinct and several sealed impression adopted by each of the parties." R. v. Austrey. As to the sealing.

In *Barleycroft* v. *Coleoverton*, *M.* 7 *Geo.* 1. 2 *Bott*, 561. 2 *Nol. P. L.* 147. If it be stated that a certificate was allowed according to the act of parliament, the Court will presume, that it was duly attested, otherwise it could not be so allowed.

In *Rex* v. *Ryton*, *E.* 33 *Geo.* 3. 5 *T. R.* 259. 2 *Bott*, 625. *Phill. Ev.* 464. 2 *Nol. P. L.* 193. Where the respondents produced a certificate, more than thirty years old, purporting to be granted to their parish by the appellant parish, the mere production of it was held to be sufficient, and the respondents were not obliged to shew that the certificate had been kept in the parish chest.

(2.) Of the delivery of Certificates.

In *Rex* v. *Wensley*, *H.* 33 *Geo.* 3. 5 *T. R.* 154. 2 *Bott*, 569. 2 *Nol. P. L.* 142. 173. 180. Ld. *Kenyon* C. J. held that the act requires a delivery of the certificate at the time when the pauper goes into the certificated parish, and that it was essential to the interest of that parish that it should be delivered, as the withholding it from them for a time might be the means of introducing frauds. See this case, *post*, (8.) But a certificate, though not delivered, is an acknowledgment by the parish granting it, that the pauper was settled with them when it was given, but it is not determined by the case of *Rex* v. *Buckingham*, (*post*, p. 697.) (which was cited to this point) that it prevents the pauper gaining a settlement in the certificated parish after it is granted. — Per Ld. *Kenyon* in the same case of *Rex* v. *Wensley*. A certificate must be delivered to the parish officers at the time of coming into the parish.

(3.) Of Persons who, by Certificates, are protected from Removal.

Rex v. *St. Peter and St. Paul*, *Bath*, *T.* 22 *Geo.* 3. *Cald.* 213. 2 *Bott*, 540. 2 *Nol. P. L.* 165. 377. The pauper was removed

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from the parish of *L. & W.* in the county of *Somerset*, to *St. Peter and St. Paul*, in *Bath*, as being likely to become chargeable: The sessions confirmed the order. The substance of the Case was, that the parishes of *St. Peter* and *St. Paul* had together purchased a piece of land, in the parish of *L. & W.*, and built thereon a common poor-house for the poor. To this they removed the pauper, together with others, giving them all certificates duly executed, to the parish of *L. & W.* The pauper had not been chargeable to the parish of *L. & W.*, but was removed by it on the ground that he was not an object of the certificate act, and therefore not protected by it.—Ld. *Mansfield* C. J. held that no restriction was imposed against two parishes uniting under stat. 9 *Geo.* 1. *c.* 7. § 4. to purchase a building for their poor, and that they might purchase it in a third parish; that when it is once purchased it becomes a part of the local system of each parish. And that the certificate acts authorise the whole body of the poor, of whatever denomination, and with whatever object, to leave their own, and to remove into any other parish, provided they can obtain the protection of a certificate. Orders quashed.

(4.) To what Individuals a Certificate extends.

A certificate extends to after-born children and a second wife.

Rex v. *Sherborne*, *E.* 15 *Geo.* 2. *Burr. S. C.* 182. 2 *Bott*, 578. 2 *Nol. P. L.* 174. A certificate extends not only to the certificated man himself, but likewise to all his family and all his children, whether born *before* or *after* the certificate is granted; to those by a second wife, taken while the pauper resides under the certificate after the death of the first, who had removed into the parish and resided with him under it, as also to a second wife herself married under such circumstances. *Rex* v. *Bray*, *Burr. S. C.* 259. 2 *Bott*, 580. 2 *Nol. P. L.* 156. *Rex* v. *Hampton*, 5 *T. R.* 266. 2 *Bott*, 440. *Rex* v. *Buckingham*, *Burr. S. C.* 314. 2 *Bott*, 580. *notis*.

A parish granting a certificate to a woman stated to be a spinster and with child, & acknowledging both to be legally settled in the parish so certifying, is bound to receive the child born a bastard in the certified parish.

Rex v. *Ipsley*, *T.* 28 *Geo.* 2. *Burr. S C.* 650. 2 *Bott*, 581. 2 *Nol. P. L.* 139. A certificate was given by *Studley* to *Ipsley*, which acknowledged "*Ann Causier*, a spinster, *and the child she then went with*, to be legally settled in *Studley*:" *Ann Causier* was delivered of a child, and was afterwards removed with the child from *Ipsley* to *Studley*. The sessions thought that the certificate could not extend to a bastard child *en ventre sa mere*. But the Court held that the parish of *Studley* were bound by this certificate, thus noticing the woman's being unmarried and with child, and acknowledging the child she then went with to be legally settled in that parish.

But a certificate stating the woman to be unmarried and agreeing to receive her and all the children she might thereafter have, does not extend to a bastard born several years after.

Rex v. *Mathon*, *T.* 37 *Geo.* 3. 7 *T. R.* 362. 2 *Bott*, 600. 1 *Nol. P. L.* 323, 324. The parish of *Mathon* engaged by a certificate to receive and relieve *M. C.* with the child of which she was then pregnant, and *all other children she might thereafter have*. Some years after she had an illegitimate child in the certificated parish. And the Court held that a child *en ventre sa mere* was capable of being described, as was done in *Rex* v. *Ipsley*. But here the child was not born till eight years after the certificate was granted, and being illegitimate, it is not included within the general words of the certificate, which extends only to legitimate children.

Rex v. *Darlington, T.* 32 *Geo.* 3. 4 *T. R.* 797. 2 *Bott*, 588. 2 *Nol. P. L.* 174. 176. 183. 190. Although a son resides with his father, yet if he marries and has children, a certificate does not extend to the grand-children, either so as to render them irremoveable, or prevent their acquiring a settlement. — In this case Ld. *Kenyon* C. J. said, By the words of the 8 & 9 *W.* 3. *c.* 30. the parish to which the certificate is granted, is obliged to receive the certificated person, *together with his or her family.* Now what is the fair legal import of the word *family?* It is true that in construing a will, and where it is the intention of the testator that it shall extend beyond *the immediate children*, it may have that operation: but that is not the sense in which it is used in this act. In common parlance, the family consists of those who live under the same roof with the *pater-familias;* those who form (if I may use the expression) his fire-side. But when they branch out and become the heads of new establishments, they cease to be part of the father's family. I admit that a certificate extends to the son on account of the positive words of the act of parliament, he being part of the father's family, but when he himself becomes the head of a family, then the words of the statute, public policy, and the convenience of mankind, require that he should no longer be considered as part of his father's family, or be protected by the certificate granted to his father. Giving full effect to the certificate, as far as the words of the act and the intention of the legislature go, I think it meets with its boundary line, when it has protected the family of the certificated person; that is, all those who live with the *pater-familias;* and consequently that this grandchild, who was the son of the head of a distinct family, was not prevented gaining a settlement by hiring and service.

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A certificate does not extend to grand-children, nor to children (unnamed) after they become heads of families.

The family consists of those who live under the same roof with the pater-familias, who form his fire-side. When they become the heads of new establishments they cease to be a part of the father's family.

Also in *Rex* v. *Heath, E.* 34 *Geo.* 3. 5 *T. R.* 583. 2 *Bott*, 614. 2 *Nol. P. L.* 176. 183, 184. The same point came in question, when Lord *Kenyon* C. J. said, That he wished it to be understood that he adopted the above case of *Rex* v. *Darlington* to its full extent, and he hoped the rule established in that case would be a guide in future, because it was so plain that it could not be misunderstood.

In *Rex* v. *Mortlake, E.* 45 *Geo.* 3. 6 *East*, 397. 2 *Bott*, 619. 2 *Nol. P. L.* 174. 176. 178. The same point came in question. The certificated persons had a son born to them in the certificated parish while they resided there. That son afterwards married, and had four children: having left his father's family, and occupying a separate house of his own in the certificated parish. Ld. *Ellenborough* C. J. acknowledged the determinations in the cases of *Rex* v. *Darlington* and *Rex* v. *Heath:* And said that the son by marrying and taking a separate house for himself, became the head of a new family, and was then in a condition to gain a settlement for himself in the certificated parish. The other judges agreed.

But a certificate continues as to any person who is *expressly named therein* until discharged by some act immediately affecting himself; for he is to be considered in the same situation as if the parish had granted a distinct certificate as to him. *Rex* v. *Testerton, E.* 33 *Geo.* 3. 5 *T. R.* 258. 2 *Bott*, 592. *Rex* v. *Keel, Cald.* 144. 2 *Bott*, 605. 2 *Nol. P. L.* 174. 185. 188. And consequently

But if the children be *named* in the certificate, it will extend to them after they become heads of families.

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his family reside under it and are affected by it. *Rex* v. *Bath Easton*, 8 *T.R.* 446. 2 *Bott*, 601. 2 *Nol. P.L.* 188. See *Rex* v. *Leek Wootton*, p. 701.

But as it is competent to the parties to limit the extent of a certificate, it may be framed so as to *exclude*, as well as to *include*, a person who would otherwise be considered as protected by it.

But if a child be intentionally left out of the certificate, it does not extend to that child, although he may not have become the head of a family.

Rex v. *Storrington*, *H.* 37 *Geo.* 3. 7 *T. R.* 133. 2 *Bott*, 598. 2 *Nol. P.L.* 164. 176. Two justices removed *James Ceary* and his wife and children from *Storrington* to *Patching* in *Sussex.* The sessions quashed the order, and stated the following Case: In 1778, the pauper's father, *John Ceary*, and his wife and three children, then and for some years before were resident in *Storrington*, when he and his wife and the two younger children were removed to *Patching*, from whence he soon after returned to *Storrington* with a certificate, acknowledging him, his wife, and the said two children by name to be inhabitants of *Patching*, but the pauper, then about fourteen years of age, was neither included in the order of removal, nor in the certificate; the parish officers of *Storrington* having declared upon the examination of the father before the magistrates, that as the pauper got his own living they had nothing to do with him. That the pauper both before and after his father's removal, supported himself entirely by daily labour, and lodged and boarded with his father at *Storrington*, for which he paid 5*s.* *per* week. That about two years after his father's return with the certificate, and while he continued to reside under it, the pauper being then about sixteen years of age, hired himself for a year to Mr. *Brown* of *Storrington*, with whom he had previously served as a day labourer, and served the year out, after which he again worked for himself as a day labourer, and lodged and boarded with his father on the same terms as before, (paying him so much a week for lodging and board), until he married; that he continued to reside at *Storrington* until he was removed by the present order; and that he had not done any other act (other than as aforesaid) to gain a settlement in *Storrington*. — By Ld. *Kenyon* C. J. In deciding this case, I wish not to disturb any of the authorities which have been cited; but my opinion in this case proceeds upon its own particular circumstances. Consider the situation of this family: the father, mother, and two of the younger children, who had been resident at *Storrington*, were removed by an order of justices to *Patching*, who gave them a certificate, and they returned to *Storrington*. Now, before and at the time when this certificate was obtained, the pauper had worked as a day labourer, and received his wages for his own use, had lodged in his father's house, and paid a weekly sum for that accommodation. The form of the certificate too is material, it was granted to the father, mother, and the *two younger children;* but the pauper was not included either in the order of removal, or in the certificate. If indeed he were under the disability of gaining a settlement by 9 & 10 *W.* 3. to be sure this is not one of the modes allowed by that act. But the question is, Whether he is to be considered as a certificated person? Generally speaking, *if a certificate be granted to the head of a family, it extends to all the members of that family;* but it is competent to the parties themselves to narrow the extent of a certificate; and the certificate in question

And the parties themselves may

seems to have been specially framed for the purpose of excluding the pauper from the operation of it: It is not conceived in general terms, but after mentioning the father and mother, it goes on to specify the two younger children, omitting the pauper, who was the eldest; and it is a known maxim *expressio unius est exclusio alterius*. Therefore on the particular circumstances of this case, I am of opinion that the pauper was not resident at *Storrington* under the certificate, and consequently was not disabled from gaining a settlement there by hiring and service; but I desire to have it distinctly understood that I do not by this decision mean to shake the authority of any of the former cases. — *Grose* J. The question is, Whether the pauper's residence in *Storrington* were or were not protected by this certificate; for if it were not, he is now settled in that parish. A certificate protects only three classes of persons: those who are named in it; those who are part of the family of the certificated person when it is granted; and his children born in the certificated parish after that time. Now the pauper certainly does not come within either the first or the third class: nor was he part of his father's family, as far as respects the certificate; for the certificate does not mention his name, though it does mention the names of the younger children; and the parish officers declared that he was not included in the former order of removal, which was the occasion of this certificate, because he was capable of gaining a livelihood for himself. All the parties interested considered the pauper to be *sui juris*, when the certificate was granted, and therefore it was not meant to include him; he was not a part of his father's family for the purposes of this certificate. — *Lawrence* J. of the same opinion. — Order of sessions confirmed.

To whom certificates extend.

narrow the extent of a certificate.

(5.) Of their Effect.

New Windsor v. *White Waltham*, *T.* 5 *Geo.* I. 1 *Stra.* 186. 2 *Bott*, 577. 2 *Nol. P.L.* 139, 140. The pauper being settled in *White Waltham*, where he had lived for two years with a woman who was reputed his wife, went with a certificate from *White Waltham*, owning them as husband and wife, into the parish of *New Windsor*, where they had six children. The man died, and the woman swearing they had never been married, the justices adjudged the children to be bastards, and settled in *New Windsor*, where they were born. But by the Court: The certificate is conclusive to the parish of *White Waltham*, and *they are not to* be admitted to *dispute* the validity of *the marriage*, and therefore the six children, being actually chargeable to *New Windsor*, must be sent to *White Waltham*.

A certificate, acknowledging the persons returned in it to be man and wife concludes the parish, though it afterwards appear that they were not so; the woman swearing they had never been married.

Rex v. *Headcorn*, *T.* 19 *Geo.* 2. 2 *Sess. Ca.* 206. 2 *Stra.* 1233. *Burr. S. C.* 253. 2 *Bott*, 578. 2 *Nol. P. L.* 139. The parish of *Maidstone* gave a certificate to *Headcorn*, acknowledging *Richard Burden* and *Mary* his wife, and their four children, to be legally settled at *Maidstone*. Afterwards it appeared, that *Mary* was not his lawful wife, but that he had a former wife then living. Upon which *Maidstone* acknowledged the settlement of the real and true wife, but not of the said *Mary* and her children; and pleaded, that it would be hard that they should

A certificate acknowledging R. B. and M. his wife, to be legally settled, &c. is conclusive of the fact of settlement though they were not married legally,

How far conclusive of the fact of marriage, if it be recited.

R. B. having a first wife still alive.

be forced to take two wives, and different children. But by the Court: The parish that certifies must take care for whom they certify; and the certificate is conclusive. The parish of *Maidstone* have by this certificate expressly acknowledged the said *Mary* to be their legal inhabitant; and the parish of *Headcorn* were thereupon bound to receive her. Therefore, when she becomes chargeable, the parish of *Maidstone* are obliged to provide for her and her children by *Burden*. *Maidstone* say they were deceived: But it was their own fault or folly if they were so; and *they* deceived *Headcorn*; therefore they ought to suffer, and not *Headcorn*.

Certificate including by mistake, a bastard, as a legitimate child, held conclusive.

Rex v. *Tostock*, *H.* 13 *Geo.* 3. 2 *Bott*, 582. *Burr. S.C.* 737. 2 *Nol. P.L.* 139. The case stated, that *Edward Parkinson*, otherwise *Jerman*, was born at *Tostock* of the body of *Elizabeth Parkinson* spinster, an inhabitant of the parish of *Tostock*; and that *Edward Jerman*, legally settled in the parish of *Islame*, but then residing in *Tostock*, was the putative father of the said child: that soon after the birth of the said child, *Elizabeth Parkinson* was married at *Tostock* to the said *Edward Jerman*: that some short time after the said marriage, the parish officers of *Tostock* warned the said *Edward Jerman* to get a certificate from *Islame*: whereupon *Edward Jerman* applied to the parish officers of *Islame* for such a certificate for himself, his wife, and his son, without informing them that the said *Edward* the son was born a bastard, and that they knew nothing of it that he was so: that *Islame* granted a certificate acknowledging *Edward Jerman*, *Elizabeth* his wife, and *Edward* their son, to be their parishioners. It was contended, that the certificate was improperly obtained, by the suppression of a fact which ought to have been disclosed at the time when the certificate was asked for; and that there never was a case, where the certificate was held to be conclusive when obtained by fraud on the suppression of facts, but only where they have granted them by mistake; for against mistake they might have been guarded. But it not appearing that the parish officers recommended to him to get a certificate for the son, nor that he to whom the certificate was granted desired the son to be included in it, the certificate was held, on the authority of the case of *Rex* v. *Headcorn*, to be conclusive.

Rex v. *Idle*, *M.* 59 *Geo.* 3. 2 *B. & A.* 149. 2 *Nol. P.L.* 194. The stat. 35 *Geo.* 3. *c.* 101. did not repeal stat. 33 *Geo.* 3. *c.* 54. And therefore where an unemancipated daughter was delivered of a bastard child in the township of *Idle*, during her father's residence there, with a certificate acknowledging him to be a member of a friendly society, established under stat. 33 *Geo.* 3. *c.* 54., the Court of K. B. held that such certificate extended not only to him, but to all the members of his family also; that the daughter was at the time of her delivery residing in the township under the authority of stat. 33 *Geo.* 3. *c.* 54., and that by § 25. of that act the settlement of the child followed that of the mother.

When the second marriage of the wife is not fraudulent or criminal, a certificate ac-

Rex v. *Ullesthorpe*, *H.* 40 *Geo.* 3. 8 *T.R.* 465. 2 *Bott*, 601. 1 *Nol. P. L.* 301. The case stated, that the mother of the pauper had married to a person who enlisted soon after as a soldier, and had not been heard of by her for forty years, and was never seen again by her. That hearing he was

dead, she married the pauper's father; that the parish of *Earl Philton* gave a certificate to *Ullesthorpe* acknowledging the father, *Mary his wife*, and their family, to be their legally settled inhabitants. That the original husband came home after the second marriage. The removal was of the father, mother, and pauper from *U.* to *E. P.*, and the order was quashed by the sessions, which order of sessions was quashed by the Court without opposition.

R. v. Ullesthorpe.

knowledging the second husband and M. *his wife*, will be conclusive, though the first husband return after the second marriage.

Rex v. *Buckingham, M.* 20 *Geo.* 3. *Cald.* 64. 2 *Bott,* 564. 2 *Nol. P. L.* 141. *Mary Swift*, widow, was removed from *Fringford* to *Buckingham:* The sessions confirmed the order, and stated specially, that the pauper and her father jointly purchased a house for 14*l.* or 16*l.* in the parish of *Buckingham:* each paying a part of the purchase-money. That it was surrendered to the father during his life, with the remainder to the pauper in fee: that the father was admitted: that in the father's lifetime the pauper married *Robert Swift*, who was settled at *Fringford:* that after the father's death the pauper alone according to the custom of the manor was admitted, and she and her husband came to and resided upon the premises until his death: that on 14th *June*, 1776, *Fringford* granted a certificate to the pauper, which was delivered to her and kept in her possession, and not delivered to *Buckingham* till after the removal: that the pauper, after the granting the certificate, and before the removal resided upon the premises upwards of forty days. — Upon hearing the appeal, the certificate was offered as conclusive evidence against *Fringford*, so as to prevent their setting up any settlement obtained in *Buckingham*, previous to the granting thereof. But the Court were of opinion, that the certificate under these circumstances did not prevent the pauper gaining a settlement at *Buckingham* by such estate and residence, and confirmed the order. It was moved to quash these orders, on the ground that the detention of the certificate by the pauper till after her removal, granted by the parish removing, and of which they could not be ignorant, would not entitle them to avoid the effect of it when produced at the trial against them, but that they were thereby concluded. No cause being shewn to the contrary, both orders were quashed. [See *Rex* v. *Wensley*, *post*, 713.]

A certificate is conclusive between the parish certifying and the parish to which it is granted, although not delivered till after the removal.

Rex v. *Lubbenham, E.* 31 *Geo.* 3. 4 *T. R.* 251. 2 *Bott,* 584. 2 *Nol. P. L.* 139, 140, 141. Two justices removed *Elizabeth Hutchins*, wife of *Thomas Hutchins*, (who was then absent,) and *Hepziba* her daughter, from *Lubbenham* to *Oxendon*. The sessions quashed the order, and stated the following Case: The pauper *Elizabeth* was married about seventeen years ago to *J. Hutchins*, who was settled at *Oxendon*. Two years afterwards he was convicted of a robbery, and condemned, but reprieved on his enlisting as a soldier: he went abroad, and five years after his wife *Elizabeth* (hearing that he was dead) was married to *Thomas Ponton* at *Lubbenham*. About a twelvemonth after *Hutchins* returned. Whilst the said *Ponton* and *Elizabeth* were residing together at *Threddingworth* as man and wife, they went together to *Lubbenham* for a certificate to *Threddingworth* who granted one accordingly; acknowledging the said *J. Ponton* and his wife (without mentioning her christian name) to be legally settled in *Lubbenham*, and they returned with it to *Thredding-*

A certificate is not conclusive excepting between the two original parishes.

When a question arises between the originally certifying parish and a third parish, the certifying parish may inquire into the truth of facts stated in that certificate.

Between what parishes a certificate is conclusive.

R v. Lubbenham.

worth. Ponton was never married to any other person but the said *Elizabeth. Hepziba* was born during their cohabitation at *Lubbenham*, and there baptized as the daughter of the said *J. Ponton* and *Elizabeth* his wife. — Ld. *Kenyon* C. J. In the first place, without considering the effect of the certificate, there is no doubt but that the second marriage was void, and consequently that the settlement of the pauper *Elizabeth* continued where her first husband was settled. But it is stated that she afterwards contracted a marriage *de facto* with a person whose settlement was at *Lubbenham;* and that she and her second husband applied to *Lubbenham* for a certificate to *Threddingworth*, which was accordingly granted. And therefore the question is, Whether that certificate be conclusive against *Lubbenham* as to all the world, or only as between the two contracting parishes? Now estoppels in general are not to be favoured; they are to be extended only as far as the positive rules have gone; because the tendency of them is to prevent the investigation of the truth of the case. It is reasonable that a certificate, which is a kind of estoppel, should protect the parish which acts immediately on the faith of it; by the act of the officers of *Lubbenham* the parish of *Threddingworth* were induced to receive the parties into their parish; but there is no necessity for extending the estoppel any farther. In all the cases, except that of *Honiton* v. *St. Mary Axe*, the question arose between the parish granting the certificate and the parish to which it was given. That is the only case which extends the doctrine further; and there it is said that a certificate is conclusive on the parish granting it as to all the world. But the reason given by Ld. C. J. *Parker*, "That as all other parishes are bound to receive the pauper, so the parish that certifies is concluded as to all other parishes," is not true; for other parishes are not bound to receive the pauper; there must be a particular parish in contemplation at the time of granting the certificate. Therefore as the reason on which that case was decided fails, we are delivered from the authority of it. Then what reason is there why the truth of the case should not be enquired into? No injury is thereby done to the third parish; no imposition is practised upon them; neither is there any hardship in it. It would indeed be a hardship on *Threddingworth* parish, who acted on the faith of the certificate, and who were bound to receive the parties mentioned in it, if the certificate were not conclusive in their favour against *Lubbenham:* but that reason does not extend to this parish. Therefore on that ground, and on the principle that estoppels are not to be favoured, the parish of *Lubbenham* ought not to be precluded from enquiring into the truth of the case: and according to the truth of the case it appears, that the pauper *Elizabeth* was settled at the place of her first husband's settlement. I am therefore of opinion, that the order of sessions, as far as it respects the wife, should be quashed; but affirmed as to the child, because the fair conclusion from all the facts stated is, that she was a bastard. — *Ashkhurst, Buller*, and *Grose* Js. delivered their opinions to the same effect. Order of sessions quashed as to the mother, and affirmed as to the child.

A certificate is not binding

Harrison v. *Lewis, E* 5 *W.* 3. 3 *Salk.* 253. 2 *Bott,* 576. 2 *Nol. P. L.* 184. A certificate promising to receive the persons

whenever they become chargeable, is not conclusive against a settlement obtained afterwards; for though it be according to the agreement between the parishes, yet a private agreement in this respect shall not alter the law.

How far limited by delivery.

against a subsequent settlement.

Rex v. *Petham, M.* 14 *Geo.* 2. 2 *Stra.* 1147. 2 *Bott,* 578. 2 *Nol. P. L.* 177. 180. The pauper was bound apprentice to a certificate-man in *Tenterden,* and after living with him there two years, was by him assigned over to a parishioner of *Lidd,* with whom he inhabited and served for the remainder of the seven years. And the Court were all of opinion, that such assignment being good as to the purpose of a settlement, the apprentice gained a settlement in *Lidd,* the uncertificated parish.

A certificate is not restrictive from gaining a settlement in a third parish; and therefore the apprentice to a certificated man being assigned to one in another parish, may gain a settlement in that parish by serving him there.

In *Rex* v. *Sherbourne, E.* 15 *Geo.* 2. *Burr. S. C.* 182. 2 *Bott,* 578. 2 *Nol. P. L.* 177., it was observed by Mr. J. *Denison* (to which all the Court agreed) that a certificate provides for the security of that parish only into which the certificate persons came to reside by virtue of such certificate; but doth not exclude a certificate-person from gaining a settlement in another parish, in the same manner as any other person may do.

Rex v. *Silton, H.* 21 *Geo.* 2. *Burr. S. C.* 269. 2 *Bott,* 32. 2 *Nol. P. L.* 177. The father and mother of *John Milbourn* the pauper, came from *Silton* with a certificate to *Wincanton.* The said pauper was afterwards born in *Wincanton,* and at twelve years of age was bound out by the parish of *Silton* apprentice to a tailor at *Horsington* for eight years, and served him there. The question was, Whether the son of a certificated person, born in the parish to which his father came by certificate, and bound apprentice and serving an apprenticeship to a master in a third parish, gains a settlement in the third parish by such apprenticeship? By the Court: The pauper in this case was a person at large, as to every other parish except *Wincanton,* to whom the certificate was delivered; and therefere he gained a settlement at *Horsington.*

A certificated person is at large as to every parish but the certificated one.

Rex v. *Horsley, T.* 28 *Geo.* 2. *Burr. S. C.* 385. 2 *Bott,* 581. 2 *Nol. P. L.* 177. *Horsley* gave a certificate to *Abraham Cope* and his family, who went with it to *Hollingsclough,* where his son the pauper was born. The pauper at twelve years of age went to *Peck,* and was hired and served for a year there; and then returned to *Hollingsclough.* The question upon this case was, Whether the son of a certificated person, born in the parish to which his parent came by certificate, could gain a settlement in a third parish by a hiring and service for a year? And the Court were clear that this gained a settlement in the third parish; and that the above case of *Rex* v. *Silton* was in point, only with this immaterial difference, that there the son's settlement was gained by apprenticeship, and here by a hiring and service.

So also in the case of hiring and service in a third parish.

Rex v. *Bishopside, T.* 28 *Geo.* 2. *Burr. S. C.* 381. 2 *Bott,* 581. 2 *Nol. P. L.* 180. *Jonathan Joy,* being settled in *Menwith cum Darley,* came from thence with a certificate to the township of *High and Low Bishopside,* where he resided for some years. Afterwards he purchased a freehold house for the sum of 10*l.* in the township of *Dacre cum Buerly,* and went to inhabit there, to which place he carried his certificate, and delivered it to the proper officer there. During his residence at *Dacre cum Buerly, John Thackrey*

A certificate extends no further than to the place where first delivered.

How far discharged by the gaining a subsequent settlement.

R. v. Bishopside.

the pauper was bound to him as an apprentice by indenture, and served his apprenticeship with his said master, who all the time inhabited in his said house in the township of *Dacre cum Buerly*. The question was, Whether he gained a settlement in *Dacre* by such apprenticeship? It was argued on the one side that he could not; for his master himself in that case resided under the certificate which he brought with him when he came from *Bishopside*, and consequently the apprentice could not gain a settlement with him at *Dacre*. Unto which it was answered, that the master did not reside as a certificate-person at *Dacre*, because, living upon his own estate there, he needed not to have delivered any certificate, and the certificate which he did deliver could have no effect at *Dacre*, as it had before been delivered to *Bishopside*, which they ought to have kept for their own protection; and if a certificate had been necessary, he ought to have produced another certificate. And of this opinion was the Court, and held that the apprentice gained a settlement at *Dacre*.

(6.) Of the continuance of Certificates.

Where a certificated-man takes an apprentice, and then goes with him to another parish, and the apprentice resides there forty days as an apprentice, the apprentice gains a settlement there.

Rex v. *Spotland, H.* 5 *Geo.* 3. *Burr. S. C.* 527. 2 *Bott*, 604. 2 *Nol. P. L.* 180. The pauper, *John Hamer*, was bound apprentice to a certificated man at *Castleton*, and served his master at *Castleton* for some years. Then he removed with his master to *Spotland*, where he served him forty days and upwards, and then was married to a young woman whose parents lived at *Castleton*; and till the expiration of the apprenticeship, which was upwards of half a year, the apprentice worked in the daytime with his master in *Spotland*, but went and lodged with his wife at her parents' house at *Castleton*. By the Court: The master, who was a certificated man at *Castleton*, gained no new settlement in *Spotland*; and the pauper still remained an apprentice to this certificated man. The master may still go back to *Castleton*, the parish to which he was certificated. Indeed, it hath been determined, that if a certificated person goes to another parish, and becomes chargeable to it, and is by an order of justices removed from thence to the parish which gave the certificate then the certificate is at an end, it is satisfied, it is *functus officio*, and it can have its effect but once. But here the removal is voluntary, not by force: the certificate subsists; and the apprentice remains part of his master's family. He was so at *Spotland*; and all along continued to be so. The certificate act says, That the apprentice shall not gain a settlement in the parish to which his master came by certificate. But as this apprentice hath gained an intermediate settlement, he ought to be sent to that settlement which he hath intermediately gained. And the Court were unanimous that his settlement was at *Spotland*.

A voluntary removal to a third parish, is not of itself a desertion of the certificate.

A certificate is discharged by gaining a settlement in another parish.

Rex v. *Great Torrington, T.* 30 & 31 *Geo.* 2. *Burr. S. C.* 428. 2 *Nol. P. L.* 184. By a certificate from *Lancrass*, *Mary Bray* came to *Bideford*, and inhabited there some years. Then she was bound apprentice by the officers of the parish of *Lancrass*, and lived under the indenture at *Great Torrington*, for several years. After the expiration of the apprenticeship, she

hired for a year, and served that year in *Bideford*. The question was, Whether by this hiring and service she gained a settlement at *Bideford*, to which place she had come by certificate? And it was adjudged (the point being given up), that, having served an apprenticeship in a third parish, she was become quite clear of the certificate, and therefore was as much at liberty to gain a new settlement in *Bideford* as any uncertificated person could be.

Where a son, though named in a certificate, may derive a settlement from his father.

And the like was adjudged in the same term, in the case of *Rex* v. *Keynsham*, *Burr. S. C.* 429. *2 Nol. P. L.* 184.

See *Rex* v. *Keel*, (*post*, 707.)

Rex v. *Leek Wootton*, *T.* 52 *Geo.* 3. 16 *East*, 118. *Bott*, *Cont.* 23. 2 *Nol. P. L.* 174. 176. 187, 188, 189. Removal of *Joseph Bromwich*, his wife, &c. from *Leek Wootton* to *Milverten*, both in the county of *Warwick*. The sessions quashed the order.—Case: Some time before and at the time of making the order of removal, *Joseph Bromwich* and his family resided in the city of *Coventry*, within which the removing magistrates had no jurisdiction; but he had applied to the overseers of the parish of *Leek Wootton* for relief before the order was made. In *April*, 1790, *Michael Bromwich*, the father of the pauper *Joseph*, being resident in *Leek Wootton*, went from thence with his family, of which the pauper was one, to reside with his (*Michael's*) father, *Joseph Bromwich* at *Milverton*, who rented a tenement there at a rent of 6*l.* a-year; but the same was of the yearly value of 10*l.* He had no lease thereof, but was tenant from year to year. He made a will, and dying in *May* following, devised his interest in this tenement to his son *Michael*, and appointed him his executor. *Michael* continued in possession and remained in this tenement many years, and paid the last rent due from his father as his executor. In 1791, and while he was in possession of the tenement, *Michael* applied to *Leek Wootton* for, and the parish officers there granted, a certificate, by which they acknowledged him, his wife, *Joseph* (the pauper) and several other children by name to be their inhabitants, and legally settled in the parish of *Wootton*. *Joseph* was then about twelve years of age, and continued to reside at *Milverton* with his father on this tenement five years after the death of *Joseph Bromwich* the elder, but never gained any settlement in his own right.—In support of the order of sessions it was argued, that the pauper could not gain a derivative settlement from his father in the same parish, as he (the son) was expressly named in the certificate, and therefore resided under it *suo jure*, and not merely as part of his father's family, this they said distinguished this case from *Rex* v. *Hampton*, *Rex* v. *Heath*, and *Rex* v. *Mortlake*, in none of which the derivative settlement was held to be gained, because the pauper was not named in the certificate, except under the general description of the father's family.—They relied on *Rex* v. *Testerton* and *Rex* v. *Bath Easton*. On the other side they relied upon *Rex* v. *Cold Ashton* and *Rex* v. *Deddington*.—Ld. *Ellenborough* C. J. Some cases have been cited upon this occasion which are certainly of great weight, but which are in contradiction to the prior cases of *Cold Ashton* and *Deddington*; and therefore the Court are obliged to refer to the fountain head of all, the statute, to see which of them most corresponds with the words of it, and upon the best consideration I think that

The settlement of a son coming into a parish with his father under a certificate, as part of the father's family, not having before gained any settlement of his own, shifts with the settlement of the father in the certificated parish, though such son were named in the certificate.

Where a son, though named in a certificate, may derive a settlement from his father.

R. v. Leek Wootton.

the cases of *Cold Ashton* and *Deddington* range more strictly within the words of the stat. 8 & 9 *W.* 3. *c.* 30. and 9 & 10 *W.* 3. *c.* 11. The second of these statutes recites the former, which empowers the granting of such certificates to provide for the person mentioned in the certificate, with his or her family; and the legislature evidently meant, that the certificate should be entire to protect the *pater familias* and his family, whether named or not; and the naming of any of the family is mere matter of convenience, in order the more easily to identify them, but is not directed to be done by the legislature, nor are any powers taken away from or given to such children on account of their being named or not named in the certificate. The stat. 8 & 9 *W.* 3. says, that when any person coming to inhabit and reside in any parish, shall at the same time bring and deliver a certificate to the parish officers, thereby owning the person or persons mentioned in the certificate to be an inhabitant or inhabitants of the parish certifying; every such certificate shall oblige the parish to provide for *the person* mentioned in the certificate, together *with his or her family*, when chargeable. Now the person to be named in the certificate is the *pater familias*, with his family, if he happen to have any; and then and not before it shall be lawful for any *such* person and his or her children, &c. to be removed. I am aware that the word *such* is not in the enacting part of the clause; but I think it must to complete the sense be incorporated there, being in the antecedent part of the statute. The scope and object of the act was to protect the residence of a father or mother coming with their family into another parish, without casting a burthen upon it, or enabling them to gain a settlement there except in the two ways mentioned. There is nothing in the act which requires the nomination of the constituent parts of their family, and it is mere artificial reasoning which makes the distinction between such of the children as are and such as are not named in the certificate; a distinction which the act itself does not make. Then as the child, though named, was still to be considered only as a constituent part of the family, it brings it to the question, Whether he was ousted of his derivative settlement from the father? Upon that point I think that the language of Ld. *Mansfield* is founded in reason, and not opposed by the act, that the children of all parents must have the settlement of the father until they acquire another for themselves. I think, therefore, that the pauper in this case continuing part of his father's family at the time, derived the settlement from him, and was not repelled from it by the circumstance of being named in the certificate.—*Le Blanc* J. We must take it that the son came into the certificated parish as part of his father's family, never having gained a settlement in his own right; though that was not stated in the case. Then coming into the parish as part of his father's family under the certificate, with only a derivative settlement from his father, the queston is, whether, while he continued part of his father's family, a settlement gained by his father there will not also be communicated to the son; whether the settlement of the son will not also shift with that of the father? The cases of *Testerton* and *Bath Easton* have not decided that the son, coming into a parish and continuing as part of his father's family under a certificate, is not capable of having his derivative settlement shift with his father's

settlement; they only decided that a child named in the certificate stood in a different situation from that of a child who was not named; and that the settlement of a son so named, who had ceased to be part of the father's family, should not shift with that of his father. Now here the son had gained no settlement of his own at the time, but was living with the father as part of his family; and the cases of *Cold Ashton* and *Deddington* have decided that the settlement of a son so circumstanced, though named in the certificate, shall vary with the subsequent settlement of the father; and that if he comes into the parish as part of the father's family, with a certificate, his being named in it does not prevent the shifting of his settlement with his father's. This case therefore is distinguishable from those of *Testerton* and *Bath Easton*. — *Bayley* J. The true construction of the certificate act seems to be that a pauper having an independent settlement of his own, and not merely a derivative settlement from the father, shall not, if named in the certificate, gain a settlement in the certificated parish, except in one or other of the ways permitted to the father himself; but if the child come into the parish under the certificate with his father, having only a derivative settlement from the father, what is there to prevent his settlement shifting with that of his father, as in other cases? The act does not say it shall not; and the cases say, that though named in the certificate he shall be treated as part of his father's family, and his settlement shift with his father's. It is said indeed that by the words of the act, the settlement of a certificated person can only be acquired in the certificated parish by two modes, and that this is not one of them. But I think the fallacy of the argument is this, that the children do not come into the parish under the certificate *suo jure*, but only as part of the father's family and under his protection. The cases of *Cold Ashton* and *Deddington* have decided this point. And if this were not the true construction, this inconvenience would follow, that however young the children might be, coming with their father into the parish with a certificate naming them, if the father gained a new settlement there, he would be settled in one parish, and the children in another. Order of sessions quashed.

What acts of law shall discharge a certificate.

R. v. Leck Wootton.

Although the stat. 9 & 10 *W.* 3. says, that no person who shall come into any parish by certificate, shall be adjudged by any act to have gained a settlement there, unless he shall really and *bonâ fide* take a *lease* of a tenement of 10*l.* value, or execute some annual office in the parish; yet it hath always been holden, that a man may not be removed from his own, whether it come to him by descent, devise, or purchase; and continuing thereon forty days, he shall thereby gain a settlement, provided that in case of purchase the consideration *bonâ fide* paid amount to the sum of 30*l.*

Also a certificate is discharged by an estate coming to a man by descent, devise, or purchase, he continuing thereon forty days.

Rex v. *Sudbury*, *H.* 28 *Geo.* 2. *Burr.* S. C. 373. 2 *Bott*, 602. 2 *Nol. P. L.* 181. *Thomas Bladon* being settled at *Sudbury*, came by certificate with his wife and children to *Uttoxeter*. *Thomas* died there, and his wife and children remaining at *Uttoxeter* under the certificate, became chargeable, and were removed and sent back to *Sudbury*. In about a year after *John Bladon*, one of the said children, was bound apprentice in the parish of *Uttoxeter*, and served out his time there. The question

Also by a removal by order of justices.

R. v. Sudbury.

was, whether by such apprenticeship he gained a settlement at *Uttoxeter?*—By *Ryder* C. J. and the Court; The removal in this case to *Sudbury* did restore the pauper to a new right of gaining a settlement; for the certificate is as it were *functus officio*, and is discharged by the order of removal. It can have its effect but once; and after the removal back it is totally at an end; and the certificated person is restored as fully to the capacity of gaining a settlement, as if there had been no certificate at all. The law is so far from looking upon a certificate as continuing after an order of removal, that the pauper cannot return to the place from which he was removed, without incurring a penalty. And it was adjudged that the pauper gained a settlement at *Uttoxeter*.

In *Rex* v. *Taunton St. Mary Magdalen, T.* 29 & 30 *Geo.* 2. *Burr. S. C.* 142. 2 *Bott*, 603. 2 *Nol. P. L.* 184. it was held that the certificate was discharged, where the object of it returned with his whole family to the certifying parish and died there without going back to the parish which received him under the certificate.

See also *Rex* v. *Mortlake*, (*post*, 714.)

A parish certificate granted to T. C. and J. his wife, engaging to receive them, *their child or children born or to be born*, only extends to a son, born at the time of granting the certificate, so long as he continues part of his father's family; therefore where the son married, and resided with his family apart from his father, in the certificated parish; Held, that his apprentice gained a settlement by serving him in the said parish.

Rex v. *Thwaites, T.* 53 *Geo.* 3. 1 *M. & S.* 669. *Bott, Cont.* 26. 2 *Nol. P. L.* 190. Removal from *Harrington* to *Thwaites;* the court of quarter sessions confirmed the order, subject, &c.—Case: The pauper *Huddleston* was born in *Thwaites*, but was afterwards regularly bound apprentice to one *R. Cass*, in the township of *Brigham*, and duly served and resided his whole time (seven years) in the said township. *T. Cass*, the father of *R. Cass*, resided at *Brigham* under a certificate from the churchwarden and overseers of the township of *Sunderland*, which had been delivered to the parish officers of *Brigham*, acknowledging "the said *T. Cass* and *Jane* his wife to be legally settled within their township, and that as such they did thereby promise and engage for themselves and successors, churchwardens, and overseers, to receive them the said *T. Cass* and *Jane* his wife, *their child or children born or to be born* in their said township as persons legally settled whenever they or any of them should become chargeable, or upon any other occasion whatsoever." *R. Cass*, the pauper's master, was born at the time of the certificate so granted and delivered, and during the time of the pauper's serving him was a married man, residing with his family in the township of *Brigham*, apart from his father; but it did not appear that he had gained any settlement there. The question for the opinion of the Court is, whether the pauper gained a settlement in *Brigham* by such service and residence with *T. Cass*.—After argument, Ld. *Ellenborough* C. J. said, This appears very clearly to have been a service under an indenture of apprenticeship to a person who at the time was not protected by the certificate, and consequently such a service as, coupled with the residence, will entitle the pauper to a settlement in *Brigham*. The certificate engages "to receive the father, and mother, their child or children born, or to be born." The parish officers perhaps did not know the name of the son, or probably they were ignorant of the fact that they had any son at the time; but it is clear that they meant only to comprehend the whole of the family, with which the parents should migrate. The parents do migrate with their own son into another

township, and there the son afterwards separates from them and becomes himself the head of a distinct family, and so from that time was emancipated. This is a main feature that distinguishes this case from *Rex* v. *Sowerby*, where the party continued to reside with his mother, and brings it within the case of *Rex* v. *Mortlake*; which is also an authority to shew that the pauper by serving the son under these circumstances in the certified township, will thereby gain a settlement in that township.—*Le Blanc* J. It seems to be admitted, that this case falls precisely within the determination of *Rex* v. *Mortlake*, unless it can be distinguished upon the terms of the certificate. The circumstance of distinction relied on is this, that the certificate is in its terms an acknowledgement of "the child or children born or to be born;" and this, it has been argued, is the same thing as if the child had been expressly named by its christian name in the certificate. If this were so, there would be an end of the question; for it has been determined, and that determination has never been shaken, that a child named in the certificate stands precisely in the situation of the father, that is, as one of the principals mentioned in the certificate; and, therefore, if the son had been named in this case, it would follow that a service with him as an apprentice would not have conferred a settlement in the certified parish. No case, however, has been cited, to shew that any thing less than an express mention of the person by name will have the same effect as naming him; or that describing him by the words "child born or to be born," has ever been held to be equivalent. The current of all the authorities seems to decide this, that if a person, who is not named in the certificate, but only comes within the scope of it as being the child of a person named, abandon the roof of his parents and become himself the parent stock of another family, such person is not only capable of gaining a settlement himself, but also of being the means of others gaining a settlement by service with him; although his father remains protected by the certificate. I am therefore of opinion that the decision of the sessions was wrong. —*Bayley* J. The provisions of the certificate act seem to place this case in a clear point of view. The statute enacts (*a*) "that if any person or persons that shall come into any parish or other place there to inhabit and reside, shall deliver to the churchwardens or overseers a certificate under the hands and seals of the churchwardens and overseers of any other parish, township, or place, thereby acknowledging *the person or persons mentioned* in the said *certificate*, to be an inhabitant or inhabitants legally settled in that parish, township, or place, every such certificate shall oblige the said parish or place to receive and provide for *the person mentioned* in the said certificate, together with his or her family, whenever they shall happen to become chargeable to the parish, township, or place to which such certificate was given." Therefore if a certificate be granted to a person by name, the parish is bound to provide for him and his family: but if several members of a family be named in it, the parish must provide for each as distinct and separate members unconnected with each other. Who then are the persons named in this certificate whom the township acknowledge as their inhabitants legally settled?

R. v. Thwaites.

(*a*) 8 & 9 W. 3. c. 30. § 1.

R. v. Thwaites. The father and mother only; for "their child or children born or to be born," comprehends nothing more than their family; the children are to be received back as part of the family of the father, and not because they are acknowledged as settled inhabitants of the certifying township. In the cases relied upon, the certificate not only named the parents, but the children also. But where children come within the certificate, merely under the description of the family of the person named, *Rex* v. *Darlington*, *Rex* v. *Heath*, and *Rex* v. *Mortlake* have decided, that they continue under the protection of the certificate so long only as they constitute a part of the family. That is the plain and broad line of distinction.—*Per Curiam:* Order of sessions quashed.

If a certificate acknowledge *A.* and *B.* his wife to be legally settled, &c., and *A.* and *B.* return to the certifying parish and there have a son, and the son hire himself to a person in the certificated parish, and there marry and have a family, that family is not within the certificate.

Rex v. *Frampton upon Severn*, *T.* 20 *Geo.* 3. *Doug.* 418. 2 *Bott*, 604. 2 *Nol. P. L.* 184. *Cald.* 97. *S. C.* In the year 1751, the parish of *Tretherne* granted a certificate to the parish of *Frampton*, acknowledging *Job Minett* and *Anne* his wife to be settled at *Tretherne*. Under which certificate they lived in *Frampton* two or three years, when they voluntarily returned to *Tretherne*, and had afterwards a son named *Samuel*, born there. *Job*, the father, continued to live in *Tretherne*, for seventeen or eighteen years; when, having a relation in *Frampton* dead, he went by himself (his wife being dead) to possess himself of the effects, and remained there about six months, when being taken ill, he was by the parish of *Tretherne* recommended to *Gloucester* Infirmary, and there died. But before he went to *Frampton* to take possession of his relation's effects, *Samuel*, the son, was hired for a year, and served the same in *Frampton*, and so continued for several years until after his father died. *Samuel* afterwards married and had a child, and his wife and child were the paupers that were removed from *Frampton* to *Tretherne*.—In support of the order of removal, the counsel observed, that in the case of *Rex* v. *Taunton*, *Burr. S. C.* 402. the circumstances were very particular. The extraordinary length of time during which the certificate had slept, was considered as a waiver of it, but they seemed to doubt of the law of that case: it had been settled, they said, in latter cases (as in that of *Rex* v. *Spotland*), that a voluntary removal of a certificated person from the parish to which he has been certified, will not vacate a certificate, and this without any regard to any interval or length of time. If a pauper can, by length of time, desert or annul a certificate, how is the line of limitation to be drawn? If a month's absence from the parish will not do, will a year, or ten years, or eighteen years? By analogy to the statute of limitations, twenty years at least ought to be required. Here, the certifying parish did not look upon the certificate as at an end; for they recommended the father to the *Gloucester* Infirmary, considering him still as their own poor.—Ld. *Mansfield* C. J. The exact circumstances of this case have not occurred before, though the principle of desertion by long disuse is to be found in that of *Taunton*. But here, no faith was given by the parish of *Frampton* to the certificate as to *Samuel*, whom they never heard of till he came there as an emancipated person. This case to me seems much stronger than that of *Taunton*. *Willes* and *Ashhurst* Js. of the same opinion. There are no reasons stated for the judgment in the case of *Spotland*, and it doth not

appear either that the Court meant to contradict, or that the decision did contradict the case of *Taunton*. And the order of the two justices was quashed, and the order of the sessions quashing that order affirmed.

Desertion of certificate.

Rex v. *Keel*, *H.* 22 *Geo.* 3. *Cald.* 144. 2 *Bott*, 605. 2 *Nol. P. L.* 185, 188. *Jane Peak* was removed from *Bedworth* to *Keel*; the sessions confirmed the order, and stated specially: that the pauper was born at *Bedworth*, where her father and mother resided under a certificate from *Keel*, until their death; that she remained there after their death until she was about seven years of age, with her brother who was named in the certificate, and then voluntarily went to *Keel*, where she remained till she was fourteen years of age, during which time she was maintained by *Keel*, and then she was hired for a year, and served the same, and also two or three others in *Keel*, when she voluntarily returned to her brother's house, at *Bedworth*, and was afterwards hired to a person for a year at *Bedworth*. The question was, whether the pauper, after she returned to *Bedworth*, was to be considered as still under the certificate, or that under these circumstances, it was to be considered as having been abandoned? — Ld. *Mansfield* C. J. at first inclined to think that she returned independently and as *sui juris*, rather than to her old home and parish, and under the certificate. But *Willes* J. thought that the inquiry here must be, whether the certificate was *functus officio*? The fact is, that the pauper returned voluntarily to the house in which she had before resided under the certificate, which belonged to her brother, who was at that time resident there under the certificate: it certainly was not discharged as to him, and there do not appear to me to be circumstances, in the case sufficient to warrant us in saying, that it was so with respect to the pauper. — Ld. *Mansfield*. I am satisfied. The voluntary return to the house of her brother, who was then resident under the certificate, had escaped me. Both orders affirmed.

If a certificated person go to a third parish, and there be hired to different persons for a year respectively, and serve accordingly, and then return to her brother, who is still residing under the certificate, it is no desertion of the certificate.

Rex v. *Newington*, *T.* 26 *Geo.* 3. 1 *T. R.* 354. 2 *Bott*, 610. 2 *Nol. P. L.* 184. *John Small* and his wife and five children were removed from *Newington* to *Mersham*: the sessions quashed the order, and stated the following Case: that the pauper's father resided at *Newington* under a certificate from *Mersham* when the pauper was born: that the father removed with his whole family to *Hoo*, and stayed there two years; and from thence also removed with his whole family to *Strood*, where he continued about four years, when he died: that about two years after the death of the father, his widow went to *Newington* to keep her uncle's house, with whom she continued until his death, and afterwards lived at *Newington* till she herself died; she had been relieved by *Newington*, having gained a settlement there after her husband's death: that the pauper, within a year after his father's death, went to *Newington* and hired himself for a year (being then unmarried,) and served the same in *Newington*, and continued with the same master another year; and then was two years with the minister of the parish of *Newington*, and never gained a settlement elsewhere. — Ld. *Mansfield* C. J. It is admitted that there may exist a case in which a certificate shall be considered as *functus officio*. Then the Court ought to draw a line;

Whenever a certificated person leaves the certificated parish, without any intention of returning, the certificate is at an end.

What amounts to a desertion of a certificate.

in doing which, it will be material to consider what is the nature of a certificate. It seems to me, that a *certificate* given by the parish from which the pauper goes to another parish, *is an indemnity to that other parish from the consequences of permitting him to reside there*; therefore it has done its office the moment that residence is permanently at an end. A temporary absence for a particular purpose will not discharge it; but when the pauper has left the certified parish for years, and neither party has had any reliance upon the certificate, then it has done its duty and has no longer any operation. In the present case, the pauper had left the certified parish for six years, without any intention of returning, by which it is manifest that the certificate was discharged. — The other judges gave their opinions to the same effect; and *Buller* J. said, that whenever a pauper *returns* to the certified parish again, they should require from him a new certificate. Order of sessions affirmed.

A temporary removal is where a person goes from the certificated parish elsewhere on a visit, or on occasional business, leaving his family behind him in that parish as his domicile.

In *Rex* v. *St. Michael's, Coventry, H.* 34 *Geo.* 3. 5 *T. R.* 526. 2 *Bott*, 612. 2 *Nol. P. L.* 184. The certificated man left the certificated parish, and returned to his own parish, together with all his family, and there took a house, and resided there for two years, during which time the pauper was born; at the end of two years he and his family returned to the certificated parish, after which he returned to his own parish, and made it his permanent residence. And the question was, whether this were a desertion of the certificate? — Ld. *Kenyon* C. J. acknowledged the law to have been settled by *Rex* v. *Newington*, (*ante*, 707.) that a voluntary removal from the certificated parish, where the residence there is permanently at an end, will put an end to a certificate. He said that he understood a temporary removal, to be where the person goes from the certificated parish to make a visit elsewhere, or on occasional business, leaving his family behind him in that parish, as being the place of his domicile. On the ground therefore, that the certificated man left the certificated parish, not for a temporary purpose only, but with a view of making the certificating parish the place of his permanent residence, he considered the certificate to have been discharged. The other Judges agreed.

If the son of a certificated person leave him and go to the certificating parish, and there hire himself to and serve several persons, but gain no settlement there, and then return to the certificated person, it is no desertion of the certificate.

Rex v. *Ingworth, M.* 40 *Geo.* 3. 8 *T. R.* 339. 2 *Bott*, 616. 2 *Nol. P. L.* 185. An order of justices by which *S. Slaughter* his wife and two children were removed from *Ingworth* to *Erpingham*, was on appeal quashed by the sessions, who reserved the following Case: In 1781, the father of *S. Slaughter* the pauper, went with his wife and the pauper, as part of his family, to reside in the parish of *Ingworth*, under a certificate from that of *Erpingham*. In 1787 the pauper, then sixteen years old, let himself to *J. Brettingham*, of *Erpingham*, and served two years as a yearly servant. He then let himself to *W. Clarke* of *Erpingham*, and served him as a yearly servant for a year. He afterwards let himself from three days after *Michaelmas* following to *M. Kemp* of *Brickling*, farmer, and completed his service. At the expiration of the year he returned to *Ingworth*, where his father still resided under the certificate, and lived in his father's house about a month, during which time he worked as a day-labourer at *Brickling*, and paid his father for his board. When he returned to

Ingworth, he did not consider himself as going with a view to a certificate. At the expiration of the month he let himself for a year to *B. N.* of *Ingworth*, and lived in his service two years. — Ld. *Kenyon* C. J. Although the distinctions in some of the cases on settlements are very nice, whenever we find a case precisely similar to the case in question, we ought to be governed by it. Now, it appears to me that the case of *Rex* v. *Keel* (*ante*, 707.) is exactly like the present: there indeed Ld. *Mansfield* at first doubted whether or not the pauper returned to the certificated parish under the certificate: but afterwards he was of opinion that the pauper had returned under the faith of the certificate. If the pauper in this case had gained a settlement in a third parish, the reasoning in support of this order could have applied: but here is no ground for presuming, as in *Rex* v. *Newington* *ante*) that the parties had abandoned this certificate; for the pauper's father was resident at *Ingworth* under the certificate when the son returned to him. — *Le Blanc* J. mentioned *Rex* v. *Collingbourne Ducis*, *ante*, p. 301. the principle of which, he said, applied to the present case. Order of sessions quashed.

Of removing certificated persons.

(See the case of *Rex* v. *Morley*, *ante*, p. 308.)

(7.) Of removing certificated Persons.

No more of a certified family can be removed back than those that ask relief.

In *Rex* v. *Framlingham*, *T.* 13 *Geo.* 3. *Burr. S. C.* 748. 2 *Bott*, 539. 2 *Nol. P. L.* 196. it came to be debated, whether any more of a certified family could be removed back than the individual that asked relief: the cause went off upon another circumstance.—But Mr. J. *Aston*, in giving his opinion, said, that if several persons reside in a parish under the same certificate, the asking relief by a single one of them would not render the rest removeable. The certificate act says, that the parish who gives the certificate shall receive and provide for the person mentioned in it, together with his family, whenever he or they shall happen to become chargeable or ask relief: and then, and not before, it shall be lawful for any such person, and his or her children, to be removed to the parish from whence such certificate was brought. And it must be adjudged by the justices, that such person is actually become chargeable, before they can legally make an order of removal. Now how can the justices be authorized to make such an adjudication upon a person who in fact is not become chargeable, nor ever has asked relief?

If *A.* and his family not residents with his father ask relief, the latter is not thereby chargeable.

Rex v. *St. Mary Westport*, *H.* 29 *Geo.* 3. 3 *T. R.* 44. 2 *Bott*, 542. 2 *Nol. P. L.* 196, 197. A grandfather resided with his family under a certificate. He had a son who married and took a house in the same parish, and resided apart from his father. The son, and his child (after the son's death), had asked and obtained relief with the grandfather's knowledge; but neither the grandfather, *nor any of his family residing with him*, asked or obtained relief, or became personally chargeable to the parish. — Ld. *Kenyon* C. J. The single question is, whether these persons who have been removed can, in the fair sense of the words, be said to have been actually chargeable to the parish? Now it is negatived by the case that any of these parties received relief in person. But it is contended that they were *virtually* relieved, because the son and the grandson both received relief. But it

Where one member only of a certificated family receives relief.

R. v. St. Mary Westport.

must be observed that at that time they were not members of the family of the *pater familias* now removed: they lived apart from him, and formed another family of themselves. Then it has been said, that a burthen has been thrown upon the parish by the relief of the son and grandson, and therefore that the grandfather was virtually chargeable, because the 43 *Eliz.* requires fathers and grandfathers to support their children and grandchildren. But that proposition hastens to a conclusion too soon; for by that statute they are not *in all events* to maintain their children, &c. but only when they are of sufficient ability. Now the justices are the proper judges of that ability; and the grandfathers, &c. are only to be called upon by an order of justices.

A pauper may be removed from a parish where he is residing under a certificate to a parish in which he gained a settlement before the granting of the certificate, and need not of necessity be removed to the certifying parish.

Rex v. *St. Martin at Oak, M.* 53 *Geo.* 3. 16 *East*, 303. *Bott, Cont.* 25. Removal from *St. Martin at Oak* to *Drayton;* order quashed, subject, &c. — Case: The pauper having gained a settlement in *Felthorpe*, gained a subsequent settlement in *Drayton*. Some years after he had gained such settlement at *Drayton*, *Felthorpe* granted a certificate to *St. Martin at Oak*, acknowledging the pauper to be an inhabitant legally settled in *Felthorpe;* and the pauper continued to reside in *St. Martin at Oak* under this certificate, receiving occasional relief from *Felthorpe*, until the time of his removal to *Drayton*. The question for the opinion of the Court was, Whether the parish of *St. Martin at Oak*, into which the pauper came by certificate, were not bound to remove him back to the certifying parish, under the 8 & 9 *W.* 3. *c.* 30. — But the Court were clearly of opinion that the act was not restrictive of the power of removal from the parish to which the certificate is granted to any other parish, but only conclusive upon the certifying parish as between that and the parish to which the certificate is granted. This was considered to be the object of the act in *Rex* v. *Lubbenham*, 4 *T. R.* 251.; and in a prior case of *Rex* v. *St. Giles*, 2 *Salk.* 530. all the authorities agree that it signifies nothing when the certificate was granted: it is only an estoppel upon the parish granting it, as between the two parishes. — Order of sessions quashed.

(8.) Of Apprenticeship under Certificates.

Apprentice of an uncertified man serving a certificate man, can gain no settlement thereby in the certificated man's parish where the service is performed.

Romsey v. *St. Michael's Southampton*, *E.* 9 *Geo.* 3. *Burr. S. C.* 640. 2 *Bott*, 435. 2 *Nol. P. L.* 177. 180. *Saul Bishop* was bound an apprentice to *William Kearley* of *All Saints* for four years; and served him there for three years. It was then agreed between them and one *Samuel Dagnell*, residing in *Romsey* under a certificate from *St. Giles's* in *Reading*, that *Bishop* should work with *Dagnell* the remainder of his apprenticeship; for which *Kearley* was to receive 2*s.* a-week. *Bishop* accordingly served him and resided with him in *Romsey*. The question was, Whether the apprentice gained a settlement by this service in *Romsey?* — By Ld. *Mansfield* C. J. This question is plainer than any argument can make it. The end and intention of the act was, to prevent certificate-persons from bringing a charge upon the parishes into which they came by certificate. How then can it be imagined, that another man's apprentice should gain a settle-

ment by serving him in that parish, when his own apprentice is made incapable of doing so? And the Court were unanimously of opinion, that the apprentice gained no settlement in *Romsey*. See *Rex* v. *Hardwicke*, *ante*, p. 308.

Romsey v. St. Michael's Southampton.

Rex v. *Huggate*, *E.* 59 *Geo.* 3. 2 *B. & A.* 582. Removal from the parish of *Nunburnholme* to the parish of *Huggate*. The sessions on appeal confirmed the order, subject to the opinion of the Court of K. B., on the following Case: The paupers removed were the legitimate children of *Thomas Lazenby*, and had gained no settlement in their own right. *Thomas Lazenby*, the father of the pauper, was originally settled in *Huggate*, where his father rented a farm. During the time that *William Lazenby*, the father of *Thomas Lazenby*, so rented the farm at *Huggate*, the latter was bound out apprentice till the period of his coming of age. The master, during the whole of the apprenticeship, resided at *Spaldington*, under a certificate, at which place the apprentice served him until the expiration of the term. About the middle of the apprenticeship, *William Lazenby* took another farm of 80*l.* a-year, at *Storthwaite*, where he went to reside, and continued there during the remainder of his son's apprenticeship, and after it expired. He found his son, the apprentice, with clothes, except shoes and aprons, during the apprenticeship. *Thomas Lazenby* occasionally visited his father during that time; and on one occasion, when he was ill, went to reside with him there for a fortnight, during his illness. At the time when *William Lazenby* went to reside at *Storthwaite*, *Thomas Lazenby* was between eighteen and nineteen years of age, and when the apprenticeship expired, he went home for one night. The next day he went away, and went to work at various places for himself, but never gained any settlement by so doing. — After argument, *Bayley* J. (*a*) said, It seems to me, that in this Case, *Thomas Lazenby* was not emancipated, He is bound apprentice to a certificated person, and consequently could not, by such service, gain any settlement. Unless he does so, his domicile continues to be his father's house, and he is liable to be removed thither at any time. If, indeed, he had withdrawn himself from his father's family after twenty-one, no doubt it would be an emancipation from that period. But a separation, whilst under twenty-one, does not produce that effect, unless a subsequent settlement be gained. Here none was gained, and, therefore, his settlement shifted to *Storthwaite*, with that of his father. — *Holroyd* and *Best* Js. concurred. — Order of sessions quashed.

Where a pauper was bound apprentice to a certificated man, and during his apprenticeship, he being of the age of eighteen, his father gained a new settlement, and the pauper did not return to his father's till after twenty-one; Held to be not emancipated but to follow his father's settlement.

(*a*) Abbott C.J. was absent.

Rex v. *Hinckley*, *T.* 31 *Geo.* 3. 4 *T. R.* 371. 2 *Bott*, 437. 2 *Nol. P. L.* 164. 180. The pauper *J. Furborough* was born at *Frowlesworth*, where his father was settled, and at nine years old was bound a parish apprentice to *D. Palmer* of *Hinckley*, who was residing there under a certificate from *Copson*. The pauper, after serving part of his time with *Palmer*, was assigned by him to *J. Hurst*, a legal parishioner of *Hinckley*, under an agreement that *Hurst* was to pay 1*s.* a-week to *Palmer*, and which was paid accordingly. He served *Hurst* in *Hinckley* above forty days before he left him. The sessions being of opinion that he gained a settlement by serving *Hurst* under the assignment, confirmed the order by which he and his wife were removed from *Frowlesworth* to *Hinckley*. — The Court took time to consider:

Apprentice to a certificate man serving an uncertificated person in the same parish.

Apprentice to a certificated man in the certificated parish, transferred to and serving an uncertificated inhabitant of the same parish.

R. v. Hinckley.

when Ld. *Kenyon* C. J. delivered their unanimous opinion: The question in this case is, Whether any settlement was obtained by the apprentice by his service under his second master, who was a parishioner of *Hinckley*, in that parish, his first master, by whom he was assigned, having been certificated thereto? The first impression made upon my mind was, that as the last forty days of the apprenticeship were served under a person who was not under the disability of the certificate, such service gained a settlement: but upon looking more fully into the authorities cited, on which I had formed my first opinion, and adverting more particularly to the words of the statute of *Anne*, I am disposed to think that a settlement was not acquired by the service under the indenture of the second master in *Hinckley*, although he were not residing there under the certificate. And that opinion which we have formed proceeds principally on the words of the statute of *Anne*, and the view with which it was passed. By the general tenor of the certificate act, persons settled in one parish, bringing a certificate with them into another, have a right to remain there until they become chargeable; and the parish to which such certificate is granted cannot refuse to receive them. But the mischief was, that though the certificated persons themselves could not gain a settlement in that parish, yet they were the means of conferring settlements on others, by taking servants and apprentices, which was thought to be a great hardship on those parishes who were bound to receive them under the certificate. Therefore to provide against that inconvenience the 12 *Ann. st.* 1. *c.* 18. was passed. There has never been any precise determination on this point; and therefore we think it better to abide by the words of the act, from whence the intention of the legislature can best be collected; and the act having expressly provided, that persons bound apprentices to certificated men shall not *by virtue of such apprenticeship, indenture, or binding*, gain a settlement in *such parish*, it is necessary that the *binding* should be such as would be capable of conferring a settlement by service under the original master in that place, otherwise no settlement can be gained there by virtue *thereof;* for the legislature intended that no act whatever of this sort done by a certificated man should help to bind the parish. As to the case of *Rex* v. *Petham*, *ante*, p.699, where it was held, that the apprentice of a master certificated to *Tenterden* might gain a settlement under an assignment to a second master residing at *Lidd*, which was a third parish; that does not govern the present; because it does not interfere with the policy of the statute of *Anne:* for the parish of *Lidd* had not received the original master by force of the certificate, and therefore had no right to avail themselves of the provisions of that statute, which was intended for the protection of the certificated parish. But here the words of the statute cover *Hinckley* in the broadest manner, to prevent any burthen coming on that parish on account of their obligation to receive the certificated person. The other case principally relied on (*viz.* the case of *Romsey* parish) has no application to the present question; for though it was contended generally at the bar, that the statute of *Anne* was confined to apprentices bound by indentures to certificated masters, and claiming settlements by serving under such original

masters, yet the Court by no means adopted that argument, but decided rather on the ground that no settlement could be gained by the apprentice through the medium of a certificated person in that parish. Therefore as there has been heretofore no determination on this point; as the statute of *Anne* was passed for the express protection of the certificated parish; and as the words of the act are very particular and positive in favour of that parish, we see no reason to restrain the meaning of them to a service with the original master. Both orders quashed. R. v. Hinckley.

A second certificate to a pauper discharges a former one given by the same parish.

Rex v. *St. Peter in the Borough of Derby*, *E.* 26 *Geo.* 3. 1 *T. R.* 218. 2 *Bott*, 437. 2 *Nol. P. L.* 182. Two justices removed *Benjamin Pratt*, and his wife and four children, from *St. Peter Derby* to *Chaddesden*; the sessions quashed the order, and stated the following Case:—That *Pratt* the pauper, on the 5th *November*, 1751, was bound an apprentice for seven years to *Joseph Pinn* of *All Saints*, in *Derby*, to which place *Pinn* had a certificate from the parish of *Smalley*; the pauper served his master in *All Saints* about five years and a half: and the master and his family at *Lady-day* 1757 removed to *Chaddesden*, where he resided till 14th of *January* 1758, when *Smalley* granted *Pinn*, the master, a certificate. Between *Lady-day* 1757 and 14th *January* 1758, the pauper served his master upwards of forty days in *Chaddesden*. *Pinn* never returned to *All Saints*, but continued at *Chaddesden* under the certificate: but the pauper returned to *All Saints* in the summer of 1758, and served his master there upwards of forty days after *Smalley* had granted the certificate to *Chaddesden*. The sessions were of opinion that the pauper gained a settlement by such last service in *All Saints*.—The only question was, whether the second certificate to *Chaddesden* discharged the former one to *All Saints*, they having both been given by *Smalley*?—The Court being of opinion that this question was determined by *Rex* v. *Bridham*, *H.* 25 *Geo.* 3. discharged the rule. Order of sessions affirmed.

Apprentice bound and serving twenty-two days before the execution of a certificate.

St. Cuthbert's v. *Westbury*, *H.* 32 *Geo.* 2. *Burr. S. C.* 470. 2 *Bott*, 434. 2 *Nol. P. L.* 181. A person settled at *St. Cuthbert's* was bound apprentice to a man residing at *Westbury*, but whose settlement was at *Harptree*, a neighbouring parish. After the apprentice had served twenty-two days, his master obtained a certificate from *Harptree*, and delivered it to the overseers at *Westbury*; and the apprentice served there further with his master for three years. The question was, Whether the apprentice hereby gained a settlement at *Westbury*?—By the Court: Before the act, the serving under an apprenticeship to a certificated-man for forty days in the parish where the master lived, would have gained a settlement to the apprentice. But the act says, that if any person shall be bound apprentice by indenture to any person *residing under a certificate*, he shall not thereby gain a settlement. Now here is no service for forty days, under an apprenticeship to a master who did not reside in this parish under a certificate: therefore the apprentice in this parish did not gain a settlement. But it would have been otherwise if he had served forty days before his master became certificated.

Apprentice to a man who had a certificate, but which was not

Rex v. *Wensley*, *H.* 33 *Geo.* 3. 5 *T. R.* 154. 2 *Bott*, 439. 2 *Nol. P. L.* 173. 180. The pauper being legally settled at *Wensley*, was bound apprentice to *R. Hallem* of *Chesterfield*, with

Apprentice to a certificated man, who had not delivered his certificate.

delivered till after the apprenticeship, may gain a settlement by such apprenticeship.

whom he continued two years. Before the pauper was bound to *Hallam*, the overseer of *Chesterfield* told *Hallam* he must procure a certificate, or they would remove him; he accordingly, before such binding of the pauper, procured a legal certificate from the parish of *Chaddesden*, directed to the township of *Chesterfield*, acknowledging *Hallam* to be their parishioner; but nothing further passed between *Hallam* and the overseers of *Chesterfield* respecting the certificate, after their first requisition to him to procure one; he therefore, not being again called upon, did not deliver the certificate to the overseers of *Chesterfield*, and it remained in his hands without mention or further notice during the whole time that the pauper served him as his apprentice at *Chesterfield;* but some time after the pauper left *Hallam*, the certificate was delivered by *Hallam* to the overseers of *Chesterfield*. The sessions confirmed the ordered by which the pauper and his family were removed from *Chesterfield* to *Wensley*. — Ld. *Kenyon* C. J. We cannot depart from the express and positive words of the act of parliament, which are decisive of this question. In the construction of some statutes the courts have thought, from considering the context and the words of it, that some particular words are merely directory; but there is nothing in this statute to shew that the words commented upon should be construed to be directory only. The statute says expressly, that " if any person who shall come into any parish, &c. shall *at the same time, procure, bring, and deliver* to the churchwardens, &c. of the parish where such person shall come to inhabit, a certificate, &c.; *the act therefore requires a delivery at the time when the pauper goes into the certificated parish;* and it is essential to the interest of that parish that it should be delivered, as the withholding it from them for a time may be the means of introducing frauds. The case cited, *Rex* v. *Buckingham, ante*, 697, only decided that a certificate, though not delivered, was an acknowledgement by the parish granting it that the pauper was settled with them when it was given, but it did not determine that it prevented the pauper gaining a settlement in the certificated parish after it was granted. Both orders quashed. [See *Rex* v. *Egremont, post*, 716.

A certificate extends to the apprentice of the widow.

Rex v. *Hampton, E.* 33 *Geo.* 3. 5 *T. R.* 266. 2 *Bott*, 440. 2 *Nol. P. L.* 174. 179. It was also decided, that an apprentice taken by the second wife after the death of her husband, who had resided under a certificate, could not acquire any settlement by service under the indentures, because she, and of course the apprentice, were residing under the certificate.

So to certificated man's apprentice assigned to an uncertificated person.

So also in *Rex* v. *Hinckley*, (*ante*, p. 711.) *T.* 31 *Geo.* 3. 4 *T. R.* 371. 2 *Bott*, 437. 2 *Nol. P. L.* 180. it was holden that a certificate extended to an apprentice, who being originally apprenticed to a certificated person, was by him assigned over to a legal parishioner of the certificated parish; and that such an apprentice of course could not gain a settlement by such service.

Persons who *come into* a parish under a certificate must also *reside* there under it, for the purpose

Rex v. *Mortlake, E.* 45 *Geo.* 3. 6 *East*, 397. 2 *Bott*, 619. 2 *Nol. P. L.* 178. 190. Removal of *Mary Dormer* and her several children by name, from *Mortlake* to *Great Marlow*, and quashed by the sessions, subject, &c. — Case: *John Dormer* and *Ann* his wife, being legally settled in *Hambleton*, went with a regular certificate from *Hambleton* to *Great Marlow*, and during

their residence at *G. M.* had a son born there named *William*. *John* and *William* died there, without having gained any settlement in that parish. *William Dormer* left his father's family, married and occupied a separate house at *Great Marlow*, and had a legitimate son named *Thomas*, who in 1760, being several years after the death of *John* and *Ann*, was regularly bound apprentice to his father *William* by indenture for seven years, and served his apprenticeship under the same at *Great Marlow*. *Thomas Dormer* was afterwards married, and had a son named *Thomas*, now deceased, who was the husband of the pauper *Mary Dormer*, and the father of the four children removed with her by the order appealed against. The question was, whether under the apprenticeship of *T. D.* the elder to his father *W. D.* and the 12 *Ann.* *c.* 18. *T. D.* the elder had gained a settlement in *G. M.*, *T. D.* the younger having gained no settlement, and the paupers having no other settlement, than a derivative one under the said *T. D.* the elder? — After argument, Ld. *Ellenborough* C. J. The question is, whether *William* the son of *John*, who was once covered by his father's certificate, ceased to be so when he married and lived separately from his father; for if he ceased to be covered by the certificate himself, there seems to be no reason why he might not communicate a settlement to another, as well as gain one himself in the certificated parish. This depends upon the meaning of the word "*family*" in stat. 8 & 9 *W.* 3. *c.* 30. *The meaning of the word* is not to be taken in its largest sense, and *has been soundly restrained by the determinations in* Rex *v.* Darlington, *and* Rex *v.* Heath, *to those who constitute part of the existing household and family of the certificated person*, or as Lord *Kenyon* expressed it in *Rex* v. *Darlington*, those who form his fireside. That character cannot apply to *William* after he had married and left his father's house, and had become a new *stirps*, having a family of his own. *Rex* v. *Hampton* was decided upon the ground that the second wife continued after her husband's death to be the root and remains of the old family, and not a substantive distinct family, as here. She still continued as the representative of her deceased husband: but here the son had started for himself at the head of a new family by marrying and taking a separate house for himself. He was then in a condition to gain a settlement for himself in the certificated parish. But the words of the statute of *Anne* are relied on, to shew that he is not such a person with whom an apprentice bound to him could gain a settlement there, and it is said that they are in the *disjunctive*, "come into *or* reside in:" but upon referring to the certificate act, the 8 & 9 *W.* 3. *c.* 30., which speaks of persons who "shall *come* into any parish there to be inhabit AND reside," and the 9 & 10 *W.* 3. *c.* 11., which speaks of doubts having arisen upon the former statute, by what acts any person *coming to inhabit or reside* within any parish by virtue of any such certificate, may procure a settlement, and which enacts that no person who shall *come into* any parish (without more) by any such certificate, shall gain any settlement there, except in certain ways mentioned; I say, upon comparing the words of the statute of *Anne* with the former provisions, I think *those words must be read copulatively*, and that they mean only to designate persons *who may come into any parish for the purpose of residing*,

What is a residence under a certificate.

of being within the operation of it.

Marriage by a certificated person, leaving his father's house, and residing in the same parish.

R. v. Mortlake. *and actually reside there under* a certificate. The other judges agreed, and the order of sessions was quashed.

Certificate from a friendly society under 33 G. 3. c. 54. without proof of delivery, not available to prevent a settlement.

Rex v. *Egremont*, *T.* 51 *Geo.* 3. 14 *East*, 253. *Bott*, *Cont.* 21. 2 *Nol. P. L.* 194. *Wm. Gainsford* was removed from *Egremont* to *Cockermouth*, both in *Cumberland*, and the sessions quashed the order upon appeal, subject, &c. — Case: The respondents proved that the pauper had been regularly bound apprentice to *J. Raney*, *April* 18th, 1802, for seven years, and served with him under the apprenticeship for several years in *Egremont*; and served more than forty days of the latter part of his apprenticeship with *Joseph Borrowscall*, in *Cockermouth*, with the consent of his original master, and resided with him there for that period. On the part of the appellants, the following certificate was given in evidence, to prove that *Borrowscall* was then residing at *Cockermouth*, under such certificate, and therefore that the apprentice could not gain a settlement by serving him under the indenture. "*Cockermouth*, *April* 29th, 1807. We the undersigned, president and stewards of the Amicable Society, held at the Ship at *Cockermouth*, in the county of *Cumberland*, acting under the sanction of the legislature, do hereby acknowledge that the bearer, *Joseph Borrowscall*, senior, is a member of the said society. As witness our hands,

Joseph Hodson,	of *Cockermouth*,	Tanner,	President.
Robert Quay,	of *ditto*,	Hatter,	Stewards.
Watson Hamson,	of *ditto*,	Taylor,	

Witness *John Wallace*, of *ditto*, clerk to the society."

On the said certificate was an indorsement signed by a justice, according to the act. — And the only question was whether the production of the certificate was sufficient evidence under the 33 *Geo.* 3. *c.* 54. without proof of its having been *delivered* to the churchwardens and overseers of *Cockermouth*. — In support of the order of sessions, it was said, that this evidence was sufficient, for that the 18th sect. of the act provided that such a certificate so attested and certified, "shall be taken, deemed, and allowed in all courts whatsoever as duly and fully proved, and shall be taken and received as evidence, without other proof thereof." But that if this were not sufficient, yet the sessions, under the circumstances, might presume that it had been delivered as it was produced in court by the parish officers of *Cockermouth*, the appellant parish. — Ld. *Ellenborough* C. J. To warrant them in presuming any fact there must be presumable matter. The mere *giving* of the certificate by the society to the member, is not made sufficient by the act to protect his residence under it in the parish, without a *delivery* of it to the parish officers. The 17th sect. says, that no members of the society who shall come to inhabit in any parish, *and shall deliver to the churchwardens and overseers* of the poor of such parish a certificate, &c. shall be removeable till actually chargeable. But if it remain in the pocket of the certificated person, that is not sufficient to prevent a settlement being gained under him. Here there is an absence of any proof of its having been delivered to the parish officers before the period when the apprentice served his master in *Cockermouth*,

and therefore an exclusion of any presumption of the fact. — Order of sessions quashed. R. v. Egremont.

§ XV. Of Acknowledgement of Settlement by Relief.

Rex v. *Chadderton, M.* 42 *Geo.* 3. 2 *East,* 27. 2 *Bott,* 654. 2 *Nol. P. L.* 135. Removal of *John Buckley,* his wife, and five children by name, from *Little Bolton* to *Chadderton,* and confirmed by the sessions. — Case: On the part of the respondents it was proved that the pauper *John Buckley,* when he buried his first wife, applied to and received relief from the overseers of *Chadderton,* and that the pauper's mother being with child of a bastard, some few years after his father's death, went from another township to *Chadderton* to lie in there, and " as the pauper had heard from his mother," who has been dead some years, she was relieved there by *Chadderton.* This hearsay evidence was objected to by *Chadderton,* but received, and the removants gave no other evidence of a settlement in *Chadderton.* The sessions conceiving the above sufficient evidence of a settlement in *C.* directed the appellants to go into their case, and they proved that when the pauper was about twelve years of age, his mother and stepfather made a verbal agreement with *James Platt* of *Great Bolton,* cotton-weaver, that the pauper, who was then able to weave a little, should weave for him three years. The stepfather and mother were to have half the earnings of his weaving, and *Platt* the other half. *Platt* was to teach him to weave and find him looms, but the stepfather and mother were to find him in every thing else. He served out the three years with *Platt,* during which time he slept in *Great Bolton.* The Sundays he passed with his mother, and the rest of his time at *Platt's,* but this was not mentioned in the agreement. — Ld. *Kenyon* C. J. said, That whatever doubt might be raised as to the settlement in *Great Bolton,* concerning which he thought the sessions should have found the fact one way or other, whether the pauper contracted to serve as an apprentice, or only as a hired servant; yet at any rate the orders could not be supported, there being no evidence of any settlement in *C.,* the bare fact of the pauper's having been relieved there being no proof of it, as they might have been relieved as casual poor. — It was then observed in support of the orders, that the fact of the pauper's having received relief from the overseers of *C.* was at least *primâ facie* evidence of their being settled there, so as to call upon them to account for it, by shewing that such relief was given to the paupers as casual poor, or under a misapprehension of their being settled there, nothing of which was stated in the case; and therefore the fact must be taken as equivalent to an acknowledgement by *C.* that the paupers were their parishioners at the time. — Ld. *Kenyon* C. J. The hearsay from the pauper's mother is no evidence at all of any fact, and then the only fact applicable to the settlement in *C.* is that when the pauper buried his first wife, he received relief there from the overseers: but the bare fact of his receiving such relief is no evidence of a settlement, for the reason I before gave. If the paupers were in want of relief while they were in *C.* the overseers were bound to give it, whether the paupers were settled there or elsewhere; and by

The bare fact of receiving relief while in a parish is no proof of settlement in that parish.

Hearsay no evidence of any fact.

Relief in the inhabited parish. the 35 *Geo.* 3. *c.* 101. they could not have been removed till they were actually chargeable. The case remitted to the sessions.

Relief given (many times) to a pauper resident in the relieving parish, is no evidence of a settlement therein.

Rex v. *Chatham*, *T.* 47 *Geo.* 3. 8 *East*, 498. *Bott, Cont.* 33. 2 *Nol. P. L.* 136. Removal of *Sally Burgoyne*, widow, from *Ashford* to *Chatham*, and confirmed by the sessions. — Case: The pauper was married to her late husband *Robert Burgoyne* in the parish of *Clerkenwell*. A considerable time after their marriage, her husband went to live at *Chatham*. The pauper did not know whether her husband (who had exercised there the trade of a cordwainer, sometimes as a master, and sometimes as a journeyman) had acquired any settlement in *Chatham*, or anywhere else. But she knew he had more than once received relief from the parish of *Chatham*: that he was at one time a fortnight, at another a longer period in the workhouse of the said parish on account of illness; and that he died in the said workhouse, and was buried at the expence of the parish. During all these times of relief he was resident in that parish, but the pauper, *Sally Burgoyne*, never resided with him there, nor received relief from that parish, nor gained any settlement there in her own right. The sessions were of opinion that this was sufficient evidence of the settlement of the husband in the parish of *Chatham*. — Ld. *Ellenborough* C. J. On subjects of this sort, it is important there should be one uniform rule, as far as is consistent with law: and the rule having been laid down by Lord *Kenyon* in *Rex* v. *Chadderton*, that the bare fact of giving relief to a pauper within the parish, was no evidence of his settlement there, because it might be given to him as casual poor, it is proper to abide by it. In that case, indeed, the relief was only administered once; and it becomes necessary to consider whether its having been administered more than once, or several times, alters the case, and differs this in substance from the other, for each instance in itself might not be evidence of the settlement, and yet it might be difficult to say that several instances might not furnish the conclusion. At the same time, however, it is to be observed, that though the relief were given for any length of time, the inference may either be, that the party receiving was a settled inhabitant, or that his settlement could not be known. But that would bring it to an alternative case, on which the sessions might draw their own conclusion, and the difficulty would still exist. Upon the whole therefore it appears to me, as the better rule to adopt, that it does not amount to evidence of the settlement. And there would be great impolicy in allowing it to have any weight; for if the parish officers, by giving relief to a pauper, were to be making evidence against themselves, as to his settlement in their parish, it would make them perform their duty to casual poor with great reluctance. And therefore it is more consonant to humanity and policy, and to the rule of law laid down by Lord *Kenyon*, to say at once, that it is no evidence of the settlement, than to leave it as a matter of inference in each case. Order of sessions quashed.

But relief given by a parish to a family resident in another parish, is evidence of a settlement

Rex v. *Wakefield*, *T.* 44 *Geo.* 3. 5 *East*, 335. 2 *Bott*, 15. 2 *Nol. P. L.* 137. Removal of *Mary, the wife of* G. F., *and her five children*, by name, from *Alverthorpe with Thornes* to the township of *Wakefield*: both townships being within the parish of *Wakefield*, and maintaining their own poor separately. This was con-

firmed by the sessions.— Case: The respondents proved that the appellants had at various times during forty years past, relieved the father of *G. F.*, the husband of the pauper *Mary*, and different members of his family, some by being taken into the appellant's workhouse, and some in other ways during the time that they resided in the township of *Stanley*, and had provided coffins for and defrayed the expences of the funerals of some of the family. It was also proved that *G. F.* who at the time of appeal was thirty eight years old, the husband of the pauper *Mary*, and father of the other paupers, was born and had always lived in *Alverthorpe with Thornes.* — Ld. *Ellenborough* C. J. The relief was given by the township of *Wakefield* to the *father* of the pauper's husband, and to different members of *his* family, which must mean the family of the pauper's husband's father: and this, while they were residing in another township. This was *evidence* of the pauper's husband's settlement in *Wakefield* at that time: and this is stated to have been done at different times during the last forty years; the particular periods are not material, for no other settlement has been established since; and all things are presumed to continue in the same state, unless something be shewn to the contrary. Then the only evidence against this, is, that of the birth of the pauper's husband in *Alverthorpe*, which is no more than *primâ facie* evidence of a settlement there. Then if there were evidence on both sides, the sessions were to decide on it. — The other judges agreed, and *Le Blanc* J. added, that the place of birth is the weakest evidence of settlement. Orders confirmed.

Relief to a family resident out of the relieving parish.

in the relieving parish.

See also *Rex* v. *Maidstone, ante,* p. 435. 2 *Nol. P. L.* 138. In which Ld. *Ellenborough* C. J. said, That, however, in the absence of all other circumstances, relief might be evidence: yet that the fact of giving relief only shewed the *opinion* of the parish that the pauper was settled with them.

Rex v. *Inhab. of Stanley cum Wrenthorpe, E.* 52 *Geo.* 3. 15 *East*, 350. *Bott, Cont.* 37. 2 *Nol. P. L.* 191. *Peter Musgrave*, his wife, and child were removed by an order of two justices from the township of *Leeds*, to the township of *Stanley cum Wrenthorpe*, in the west riding of *Yorkshire.* The sessions on appeal, confirmed the order subject to the opinion of the Court of K. B. on the following Case: On the hearing of the appeal it was proved, that *Joshua Musgrave*, the grandfather of the pauper, *Elizabeth* his wife, and *Elizabeth* his daughter, came into the township of *Stanley with Wrenthorpe* with a certificate from *Ossett* in the *West Riding*, dated the 5th of *December*, 1727, owning them to be legally settled in the township of *Ossett.* No evidence was given of the pauper, his father, or grandfather, having gained a settlement in any other place, since the date of the certificate, but it was proved and admitted, that the pauper and his family had been relieved at different times by the overseers of *Stanley with Wrenthorpe*, when residing at *Leeds*, and also whilst residing at *Wakefield.* Upon this evidence the Court confirmed the order. In support of the orders, *Rex* v. *Wakefield* (*supra*) was cited, in which proof of the parish having relieved the pauper's father at times for forty years past while residing out of it, was held to be *primâ facie* evidence of a derivative settlement there. The Court were clearly of opinion, that the sessions had drawn the right conclusion.

Evidence of a settlement in *A.* by certificate granted to pauper's grand father is rebutted by shewing that *B.* had relieved the pauper and his family while residing in other places.

R. v. Stanley cum Wrenthorpe.

—*Le Blanc* J. said, That there was nothing to rebut the presumption of a settlement in *Stanley*, arising from the repeated acts of relief while the pauper and his family were residing out of the township; and *Bayley* J. asked what there was in the case to shew a derivative settlement under the grandfather still continuing; there was ample time intervening for the father to have been emancipated as well as the pauper himself: and there was no reason why the township of *Stanley*, who must have known the fact, should have relieved the pauper while residing in other townships, if they had not known that he was settled with them. Orders confirmed. See also *Rex* v. *Barnsley; ante*, p. 521.

§ XVI. Of Acknowledgement of Settlement by Order of Removal unappealed against.

Besides the various other facts of which an order of removal unappealed against is conclusive, and which may be seen by referring to § XVII. (6.) of this title, Poor, it is also adjudged in many cases, that such an order when unappealed against is conclusive that the settlement of the party in that order described is in the parish receiving under that order, and not appealing against the same.

See the cases of *Rex* v. *Kenilworth*, *Rex* v. *Southowram*, *Rex* v. *Rudgley*, (*post.*) § XVII. 6. (*b*); and many other cases scattered through the books.

And now, upon the whole, having gone through this subject of settlements, and I hope with some perspicuity and exactness; the first reflection that will arise in the mind of every reader, I think, will be to admire the subtilty of human wit. It was the observation of a wise king of *Israel* long ago, that God made man upright, but they have sought out many inventions. A stranger to our laws would not readily conjecture, how many doubts and knotty difficulties have been formed upon the construction of one short act of parliament, and one single clause of that one short act, and which upon the face of it doth not appear to carry any considerable difficulty.

The next thing that occurs is to reverence the wisdom of the Court of King's Bench, in clearing up those difficulties, and establishing the sense of the law upon solid and firm grounds; whose determinations, although they are not a law in themselves, yet they are the best and surest exposition of the law; being made by persons of distinguished abilities, educated and exercised in the profession of the law, after argument by able counsel: which advantages are not ordinarily to be expected at a Quarter Sessions. So that the law seems now to be well settled as to these matters; and consequently the disputes about settlements cannot so much arise from the uncertainty of the law, as from the uncertainty of the facts upon that law: and this, from the nature of the thing, must always be uncertain, as depending upon the testimony of witnesses, and those also for the most part of the meanest of the people.

There has been also another cause of much altercation, upon appeals against orders of removal, which arises from some defect

in those orders themselves; or from some error in the method of proceeding in relation thereto: which comes next to be considered.

§ XVII. Of Removals: and herein,

1. *Who may be removed; and herein of casual poor.*
2. *Of the order of removal, suspending the same, and execution thereof.*
3. *Of persons removed returning after removal.*
4. *Order of removal of a certificated person.*
5. *Of an appeal against an order of removal.*
6. *Of the effect of an order of removal unappealed against.*
7. *Of the effect of quashing or confirming orders of removal.*
8. *Of the power of the sessions in orders of removal.*

1. Who may be removed: and herein,

(a) *Of the removal of the wife.*
(b) ———————— *servants.*
(c) *Of removals under stats.* 17 Geo. 2. c. 5. (tit. Lunatics,) *and* 35 Geo. 3. c. 101.
(d) *Of casual poor.*
(e) *Of the removal of poor persons born in Scotland, Ireland, &c. not having committed acts of vagrancy.* 59 Geo. 3. c. 12. § 33.
(f) *Of soldiers, &c.*

(1.) Who may or may not be removed.

Stat. 13 & 14 *C.* 2. *c.* 12. which hath been so often canvassed in treating concerning settlements, is not yet to be dismissed by us, but will appear again under this head, in a new and quite different light; as being that upon which all the orders of removal are or ought to be established. And in this view there have been as many cases adjudged upon it, as in the other, although not altogether in so great a variety. 13 & 14 C. 2. c. 12.

In treating of this subject, we will set forth the statutes; then we will shew who are removeable, and next the established form of an order of removal thereupon; and then take the same in pieces orderly and distinctly, thereby to discover the several shelves and rocks upon which numberless orders have been shipwrecked.

It is true, stat. 5. *Geo.* 2. *c.* 19. § 1. whereby errors in point of form may be amended at the sessions, hath in some sort remedied these defects; but that it may appear how such errors are to be amended, and as it will be better if the order be such as shall need no amendment, and as it still remains a doubt upon that statute, what shall be deemed matter of form, and what shall be deemed of the substance of the order, this method is not the less to be pursued upon that account. See Vol. I. p. 574. and Vol. V. tit. Sessions. 5 G. 2. c. 19.

By stat. 13 & 14 *C.* 2. *c.* 12. § 1. it is enacted as follows: "*Whereas by reason of some defects in the law, poor people are not restrained from going from one parish to another, and therefore* 13 & 14 C. 2. c. 12.

13 & 14 C. 2. c. 12.
Poor people going from one parish to another.
How to be settled, coming to any tenement under 10*l.* yearly value.

endeavour to settle themselves in those parishes where there is the best stock, the largest commons or wastes to build cottages, and the most wood for them to burn or destroy; and when they have consumed it, then to another parish, and at last become rogues and vagabonds, to the great discouragement of parishes to provide stocks, where it is liable to be devoured by strangers;" it is enacted, "*That it shall and may be lawful, upon complaint made by the church-wardens or overseers of the poor of any parish, to any justice of peace, within* forty days *after any such person or persons coming so to settle as aforesaid, in any tenement* under the yearly value of ten pounds, *for any two justices of the peace, whereof one to be of the* quorum, *of the division where any person or persons that are likely to be chargeable to the parish shall come to inhabit, by their warrant to remove and convey such person or persons to such parish where he or they were last legally settled, either as a native, householder, sojourner, apprentice, or servant, for the space of forty days at the least, unless he or they give sufficient security for the discharge of the said parish, to be allowed by the said justices.*" [Altered and explained by 1 *Jac.* 2. *c.* 17. § 3. *ante* § VIII. 3 *W. & M. c.* 11. § 3. *post*, p. 725.]

Township in which last legal settlement claimed, ceasing to have overseers, removal cannot be made thither nor to any other parish.

Rex v. *Saighton on the Hill, M.* 59 *Geo.* 3. 2 *B. & A.* 162. Removal from the parish of *St. Bridget, Chester*, to the township of *Saighton on the Hill*, in the county of *Chester*. The sessions on appeal confirmed the order, subject to the opinion of the Court of K. B. on the following Case: The pauper, *Joseph Gill*, being a settled inhabitant of the township of *Saighton on the Hill*, about twenty years ago acquired a subsequent settlement, by renting a tenement in the township of *Gloverstone*, in the parish of *St. Mary on the Hill*, in the city of *Chester*, in which parish there are several townships, each separately maintaining its own poor. Of these townships *Gloverstone* was one, and was situated in the county palatine and not in the city. At the time the pauper obtained a settlement in *Gloverstone*, it was a township, having overseers and maintaining its own poor, which continued to be the case until about ten years ago, when all the houses in the township were taken down for the purpose of enlarging *Chester* castle. There are now no buildings in the township of *Gloverstone*, except part of the courts of the county, and some barracks and other buildings belonging to the Barrack Board. No overseers have been appointed for the township of *Gloverstone* for the last ten years, and there is no place within the township inhabited by persons capable of being appointed overseers. — After argument, *Abbott* C. J. said, The authority of magistrates to remove paupers exists only, and is derived from the express provisions of an act of parliament; and in a new case, the best mode for the Court is to form their judgment on the very words of the act. There may be many cases where a pauper, having no settlement in the place where he may happen to be, may still not be removeable from it; either because he has no settlement at all, or because the parish officers are not enabled to discover the place of his settlement. The words of the act are, that any two justices of the peace may, by their warrant, remove and convey persons likely to be chargeable to the parish where he or they were last legally settled. It is therefore enough for the Court, in deciding this case, to say that *Saighton* is not

the parish where the pauper was legally settled, inasmuch as he appears to have subsequently acquired a settlement in *Gloverstone*, by which the former settlement was extinguished. The justices, therefore, in this case, had no authority to remove the pauper, and the sessions have done wrong in confirming their order. R. v. Saighton-on-the-Hill.

Rex v. *The Inhab. of Oakmere, E.* 3 *Geo.* 4. 5 *B. & A.* 775. Two justices, by their order, dated *April* 1st, 1821, removed *John Bradford* from the township of *Over Tabley* to the township of *Oakmere*, both in the county of *Chester*. The sessions, on appeal, confirmed the order, subject to the opinion of the Court of K. B. upon the following Case:—The township of *Oakmere* was before, and until the passing of a certain act of parliament in the 52d year of his late majesty, part of the forest of *Delamere*, in the county of *Chester*, and an extra-parochial place. Under and by virtue of the said act, intituled "*An act for inclosing the forest of* Delamere, *in the county of* Chester," the forest was, in *December*, 1819, duly divided into four separate townships, of which *Oakmere* was one. Since that time overseers of the poor have been duly appointed for the township of *Oakmere*. The pauper, *John Bradford*, was born many years ago, a bastard, in *Oakmere*, whilst it was an extra-parochial place, and part of the forest of *Delamere*. The question for the opinion of the Court was, whether such order of removal to *Oakmere*, as the birth-place of the pauper, could be sustained. The following were the clauses in the local act, on which the question depended, "And be it further enacted, that the district called or known by the name of *Delamere Forest*, and all such lands, lying contiguous thereto, as are now extra-parochial, shall, as soon as the moiety of the said forest, which is hereby directed to be allotted to and amongst the persons enjoying rights of common thereon shall have been so allotted, divided, and inclosed, be and be deemed and taken to be a parish, and called and known by the name of *Delamere* parish, and shall for ever thereafter be and be deemed and taken to be a rectory.

Where a district previously extra-parochial was by act of parliament made a township; and it was provided that from thenceforth it should maintain its own poor and repair its own roads, and have the like powers, privileges, and immunities, and be subject to the same regulations as other townships within the county: Held, that this clause was *prospective* only, and that a bastard born within the district previously to passing the act was not settled there.

"And be it further enacted, that the said commissioners shall, and they are hereby authorized and required to divide the said parish into two or more townships, to be called and distinguished by such names as the said commissioners shall appoint; and when the same shall be so divided, each and every such township *shall, from thenceforth for ever thereafter, provide for its own poor, make and maintain its own roads, and have, enjoy, and be vested with such and the like powers, privileges, and immunities, and be subject to the same regulations as are incident to, and as are had, held, and enjoyed by the several other townships within the said county of* Chester, *by the laws and statutes of that part of the U. K. of* G. B. *and* Ireland *called* England." — The case having been argued, *Cur. adv. vult.*, and afterwards the judgment of the Court was delivered by *Abbott* C. J.—This case arises on the act 52 *Geo.* 3. for enclosing the forest of *Delamere*, and the question is, whether the district newly created into a township under this statute, which before was neither in any parish nor township, is to be considered as if it had formerly been a parish or township, with regard to settlements; or, only as becoming so from the time of its creation under the act, and as if it had formerly been wholly uninhabited. And we are of opinion, that the latter is the true construction and effect of the statute. If the former

R. v. Oakmere. construction should be adopted, much inconvenience and litigation might ensue. Many parishes, wherein paupers have been considered as legally settled, and have accordingly been maintained, might relieve themselves from their burthen, by removing to this new township not only illegitimate persons born within the district whereof the township consists, but also many of those who had been servants or apprentices, or had rented tenements of the yearly value of 10*l.*, within it. By such removals a heavy burthen might be thrown at once upon the new township. It is true, on the other hand, that the new township, having now overseers, may remove persons which the inhabitants of the district could not previously do: but then the inhabitants were not previously under the same legal obligation to maintain the poor who might be found within it, as a parish or township; the consequence of which must have been that such poor would, in general, find their way without removal into those parishes or townships that were compellable to maintain them; so that the new power of removal would not be likely to afford a relief commensurate with the new burthen: and the former want of the power of removal might have the effect of charging this new township with the maintenance of persons under circumstances in which, if the district had been previously a township, the inhabitants might have taken care to prevent the burthen from falling upon them, as by the removal of unmarried pregnant women, or of persons coming to settle on tenements under 10*l.* a year, especially before the stat. 35 *Geo.* 3. *c.* 101. The latter, indeed, would not acquire a settlement for themselves, but settlements might be derived under them by apprentices and servants. And this is not like the case of a modern appointment of overseers to places that formerly had no such officers; because all such places must have been Vills from time immemorial, and consequently under a legal obligation to maintain their poor, and possessing a legal right to the appointment of officers, and by such appointment to remove persons under the same circumstances as other townships or parishes might do. The consequence of this opinion is, that both the orders must be quashed. Both orders quashed.

13 & 14 C. 2. c. 12. Persons may go into any county, &c. to work, so that they carry with them certificate of their habitation.

Stat. 13 & 14 *C.* 2. *c.* 12. § 3. Provides that "it shall and may be lawful for any person or persons to go into any county, parish or place to work in time of harvest, or at any time to work at any other work, so that he or they carry with him or them a certificate from the minister of the parish and one of the churchwardens and one of the overseers of the poor for the said year, that he or they have a dwelling-house or place in which he or they inhabit, and hath left wife and children, or some of them there (or otherwise, as the condition of the person shall require), and is declared an inhabitant or inhabitants there; and in such case, if the person or persons shall not return to the place aforesaid when his or their work is finished, or shall fall sick or impotent whilst he or they are in the said work, it shall not be accounted a settlement in the cases above said, but that it shall and may be lawful for two justices of the peace to convey the said person or persons to the place of his or their habitation as aforesaid:" *And if such person or persons shall refuse to go, or shall not remain in such parish where they ought to be settled as aforesaid, but shall return of his own accord to the parish from*

Two justices may remove them to place of habitation.

Punishment of persons so re-

whence he was removed, it shall and may be lawful for any justice of the peace of the city, county, or town corporate, where the said offence shall be committed, to send such person or persons offending to the house of correction, there to be punished as a vagabond, or to a public workhouse, in this present act hereafter mentioned, there to be employed in work or labour. 13 & 14 C. 2. c. 12. moved, and returning to the place from which removed.

And by stat. 5 *Geo.* 4. *c.* 83. § 3. Every person returning to and becoming chargeable in any parish, township, or place from whence he or she shall have been legally removed by order of two justices of the peace, unless he or she shall produce a certificate of the churchwardens and overseers of the poor of some other parish, township, or place, thereby acknowledging him or her to be settled in such other parish, &c. shall be deemed *an idle and disorderly person* within the true intent and meaning of this act; and it shall be lawful for any justice of peace to commit such offender (being thereof convicted before him by his own view, or by the confession of such offender, or by the evidence on oath of one or more credible witness or witnesses) to the house of correction, there to be kept to hard labour, for any time not exceeding one calendar month. See Vol. V. title Vagrants. 5 G. 4. c. 83. Such offenders shall be deemed idle and disorderly persons.

And by stat. 13 & 14 C. 2. c. 12. § 3. *If the churchwardens and overseers of the poor of the parish to which he or they shall be removed, refuse to receive* such (*supra*) *person or persons, and to provide work for them, as other inhabitants of the parish; any justice of peace of that division may and shall thereupon bind any such officer or officers in whom there shall be default, to the assizes or sessions, there to be indicted for his or their contempt in that behalf.* 13 & 14 C. 2. c. 12. Churchwardens and overseers refusing to receive the person removed.

And by stat. 3 W. & M. c. 11. § 10. *If any person be removed by virtue of this act from one county, riding, city, town corporate, or liberty to another, by warrant under the hands and seals of two justices of the peace, the churchwardens or overseers of the poor of the said parish or town, to which the said person shall be so removed, are hereby required to receive the said person, and if he or they shall refuse so to do, he or they so refusing or neglecting (upon proof thereof by two credible witnesses upon oath before any justice of the peace of the county, riding, city, or town corporate, to which the said person shall be so removed) shall forfeit for each offence the sum of five pounds, to the use of the poor of the parish or town from which the said person was removed, to be levied by distress and sale of the offender or offenders' goods, by warrant under the hand and seal of any justice of the peace of the county, riding, city, or town corporate, to which such person was removed, to the constable of the parish or town where such offender or offenders dwell; which warrant the said justice is hereby impowered and required to make; the overplus, if any be, to be returned to the owner or owners; and for want of such sufficient distress, then the said justices shall commit the said offender or offenders to the common gaol of the said county, riding, city, or town corporate, or liberty, there to remain without bail or mainprize for the space of forty days.* 3 W. & M. c. 11. Churchwarden must receive a person removed by warrant of two justices of peace, upon 5*l.* penalty.

For the construction put on these two acts of 13 & 14 *C.* 2. and 3 *W. & M.* as to the penalty for not receiving a pauper legally removed, see *Rex* v. *Davis*, *post*, end of division 2. of this section.

One justice may cause a pauper to be brought to be examined, to his settlement.

Upon complaint made by the churchwardens or overseers of the poor of any parish to any justice of the peace.] By these words one justice alone hath cognizance of the matter, so far as concerneth the complaint only; and by virtue thereof may issue his warrant to bring the party before him, in order to his examination; or he may issue his warrant, to bring the party before himself and another justice, in order to hearing and determining the complaint; for he himself alone cannot hear and determine, but only bring the matter into a course of being heard and determined by two justices: and therefore it is most usual for the two justices originally to issue their joint precept to bring the party before them for that purpose. Nevertheless, if the party is willing, he may go voluntarily before the justices at the request of the overseers, without any warrant at all.

35 G. 3. c. 101. No person is to be removed till he become actually chargeable.

Is likely to become chargeable.] By stat 35 *Geo.* 3. *c.* 101. § 1., (called Mr. *East*'s act) so much of the said act of 13 & 14 *C.* 2. *c.* 12., as enables justices to remove any person or persons that are *likely* to become chargeable, is repealed. And it is enacted, *that from thenceforth no poor person shall be removed, by virtue of any order of removal, from the parish or place where such poor person shall be inhabiting, to the place of his or her last legal settlement, until such person shall have become* actually chargeable *to the parish, township, or place, in which such person shall then inhabit, in which case two justices of the peace are hereby empowered to remove the persons or persons, in the same manner, and subject to the same appeal and with the same powers, as might have been done before the passing of this act with respect to persons likely to become chargeable.*

Rogues, &c. to be deemed chargeable.

§ 5. *Provided also, and be it further enacted, That every person who shall have been convicted of larceny, or any other felony, or who by the laws now in being shall be deemed a rogue, vagabond, idle or disorderly person, or who shall appear to any two or more justices of the peace of the division wherein such person shall reside, upon the oath of one or more credible witness or witnesses to be a person of evil fame, or a reputed thief, such person not being able to give a satisfactory account of himself or herself, or of his or her way of living, shall be considered as a person actually chargeable within the true intent and meaning of this act, to the parish in which such person shall reside, and shall be liable to be removed to the parish of his or her last legal settlement by the order of the said justices of the peace whereof one to be of the quorum of the division where any such person shall reside.*

Unmarried women with child to be deemed chargeable.

§ 6. *Provided also, and be it hereby enacted by the authority aforesaid, that every unmarried woman with child shall be deemed and taken to be a person actually chargeable, within the true intent and meaning of this act, to the parish, township, or place, in which she shall inhabit, and may be removed as such to the place of her last legal settlement.* p. 736.

By the case of *Rex* v. *Martley*, *E.* 44 *Geo.* 3. 5 *East*, 40. 2 *Nol. P.L.* 110, 157. *ante*, p. 650., it appears that a pauper residing upon an estate, which he has acquired by a purchase for less than 30*l.* is irremoveable during the time of such residence.

For suspension of Orders of Removal, see post.

(*a*) Of Removal of the Wife.

St. Michael's, Bath, v. *Nunney*, *H.* 9 *Geo.* 1. 1 *Stra.* 544. *Burr. S. C.* 815. 2 *Bott*, 80. 2 *Nol. P. L.* 154, 155. Order of removal, reciting that the wife of a poor person who is now living had intruded, and was likely to become chargeable, and that the place of her settlement was in the parish of *St. Michael*; she is therefore removed thither. It was moved to quash the order, because it did not appear the husband was at the time of the removal in the parish of *St. Michael*, so that it might be, they sent the wife away from the husband. But by the Court: we cannot intend he was not; if he were in the parish from which she was sent, that indeed would vitiate the order; for the wife cannot be removed from her husband: but as neither of these facts appear against the order, to satisfy us that it is bad, we are not to presume it to be so; and therefore it must be confirmed.

Whether the wife may be removed without the husband. She cannot. But the appellants must shew that there was a separation in fact.

Rex v. *Ironacton*, *M.* 14 *Geo.* 2. *Burr. S. C.* 153. 2 *Bott*, 81. 2 *Nol. P. L.* 155. Upon complaint made by the churchwardens and overseers of *Painewick*, that *Mary* the wife of *William King*, and children, had intruded into *Painewick*, two justices removed her to *Ironacton*, which they adjudged to be the last legal settlement of the husband. Upon appeal, the sessions confirm that order. It was moved to quash these orders. The objection was, that the wife was removed without the husband, and that this amounts to a divorce between the man and his wife.—But the Court over-ruled the objection; for how doth it appear that the husband was not at *Ironacton* at that time? The Court will not suppose it to be wrong, unless it appears so. The intrusion complained of was only by the wife, and they could not remove the husband when he was not complained of.

It must appear (to make such removal invalid) that the husband was resident with the wife at the time of her removal.

Rex v. *Higher Walton*, *H.* 14 *Geo.* 2. *Burr. S. C.* 162. 2 *Bott*, 81. 2 *Nol. P. L.* 154, 155. Two justices make an order to remove *Mary Bennet*, wife of *Samuel Bennet*, to *Higher Walton*, which they adjudge to be the place of her last legal settlement. And the sessions confirm that order. It was moved to quash these orders: for that it did not appear, whether it were this woman's settlement in her own right, or in the right of her husband. And nothing shall be intended. Now if it were not her settlement in right of her husband, the justices had no power to send her thither.—By the Court: It is adjudged to be her last legal settlement; and she could not be settled but where her husband was; and we are not to intend any thing to vitiate the order. Therefore we cannot intend that the husband's settlement was not at *Higher Walton*. And the motion was denied.

If a wife be removed (*eo nomine*) to the place of her last legal settlement, it is good.

Rex v. *Yspytty*, *E.* 55 *Geo.* 3. 4 *M. & S.* 52. 2 *Nol. P. L.* 207. Upon appeal against an order of two justices, removing *Anne Williams*, her daughter and son, from *Llandyrnog* to *Yspytty*, in the county of *Denbigh*, the sessions confirmed the order, subject to the opinion of the Court of K. B. upon the following Case: The pauper

An order for the removal of a married woman (not stating her to be such, and her

R. v. Yspytty.

children to Y. adjudging that the lawful settlement of her and her children is in Y. was held well without adjudging that Y. was her husband's settlement; and proof by the mother of the husband that he gained a settlement in Y. by hiring and service, was held sufficient without calling the husband, although it appeared that he was in this country.

Anne, is the wife of *Griffith Williams*, a soldier in His Majesty's service at *Woolwich*. The mother of *Griffith* the husband proved that he gained a settlement about eleven years ago in *Yspytty*, by hiring and service, and that he had not to her knowledge gained a settlement elsewhere. This was the only evidence to prove the settlement of the husband, or of the paupers, and no attested copy was produced of the husband's examination upon oath, pursuant to the statute 54 *Geo.* 3. *c.* 25. § 69. or any other statute. The case set forth the order of removal, which was for the removal of *Anne Williams*, (*not stating her to be the wife of any one,*) *Jane* her daughter, aged three years, and *Griffith* her son, aged two years; adjudging that the lawful settlement of the said *Anne* and her children (not that the settlement of her husband) was in *Yspytty*. — *Peake*, in support of the order of sessions, relied on *Rex* v. *Bucklebury*, 1 *T. R.* 164. to shew that the order was well enough in point of form, although it did not state that *Yspytty* was the settlement of the husband. — *Gurney*, *contra*, took another objection, *viz.* that the evidence of the mother to prove the settlement of the son, when it appeared the son himself might have been called to prove it, was not the best evidence. — Ld. *Ellenborough* C. J. If the respondent parish prove enough to launch a *primâ facie* case of settlement, is it necessary they should prove more? Must they go on to call witnesses at the hazard of having that which is already proved defeated? As to the objection upon the form of the order, it is stated that it is the wife's settlement, and the medium through which she became settled there need not be stated. Order of sessions confirmed.

The wife and children of a foreigner cannot, when they become chargeable, be removed from him to the wife's parish.

Rex v. *Carleton*, *T.* 15 *Geo.* 3. *Burr. S. C.* 813. 2 *Bott*, 81. 2 *Nol. P. L.* 154, 155. Two justices removed *Johanna*, wife of *Simon Mac Owen*, and their four children, from *Hoylandswain* to *Carleton*; stating in their order, that complaint was made to them by the churchwardens and overseers of the poor of *Hoylandswain*, that *Simon Mac Owen*, *Johanna* his wife, and *Mary*, *Margaret*, *Elizabeth*, and *John*, their children, came to inhabit in *Hoylandswain*, not having gained a legal settlement there; and that the said *Simon Mac Owen* was an *Irishman*, and had done no act in *England* whereby to gain a legal settlement, and that his said wife and children were actually chargeable to *Hoylandswain*; which complaint they adjudged to be true, and that the last legal settlement of the said *Johanna* the wife of the said *Simon Mac Owen*, and of their said children was in *Carleton*; and therefore they removed them thither. The sessions upon appeal confirmed that order, and stated specially: That *John Tyas*, father of the said *Johanna*, in the year 1727, came with a certificate from *Carleton* to reside in *Hoylandswain*, and during his residence there, his daughter *Johanna* was born, and continued to live with him there until she was upwards of twenty-one years of age: That she afterwards took a house at *Holylandswain*, and resided therein till she was married to the said *Simon Mac Owen*; who, upon his marriage, went to reside with the said *Johanna* his wife in her said hired house, and continued to reside with her therein from the time of their said marriage, which was in *September*, 1766, until she and the said children were removed, under the said order, from the

said *Simon Mac Owen*, and from his said dwelling-house wherein he then lived, and still continued to reside: That the said *Simon* from the time of his said marriage, followed the business of a cloth-dresser, and thereby maintained himself, and his said wife and family, until a little time before the said order of removal was made; when his said wife and children being taken ill of a fever, she applied to the overseers of *Hoylandswain* for relief, and she was not recovered at the time she was removed, and could hardly ride. — It was moved to quash these orders, and objected that this would occasion a separation between husband and wife; and amount in effect to a divorce. — And the Court were clear, that the removal was wrong. It was not like the case of the husband being dead or having left his wife. Here the husband was alive, resided at *Hoylandswain*; followed the business of a cloth-dresser there; and maintained his family by it for many years, till they were taken ill of this temporary fever, which obliged them to apply for relief. The parish had had the benefit of his labour nine years. This man was settled in a house and carried on business in this place. There might be no business for a cloth-dresser at *Carleton* at all. Or this man might have no acquaintance there. He might starve there, though he could maintain his family at *Hoylandswain*. And both orders were quashed. *Removal of a wife, the husband living.* R. v. Carleton.

Rex v. *Hinxworth*, *H.* 18 *Geo.* 3. *Doug.* 46. (*n.* 13.) *Cald.* 42. 2 *Bott*, 83. 2 *Nol. P. L.* 143. Two justices removed *Sarah*, calling her, in the order, "the wife" of *Joseph Griffin*, and five of her children, from *Cheshunt* to *Hinxworth*, in the husband's absence, and without having examined him. The order was not appealed against. The husband soon after went to his wife and children at *Hinxworth*, from whence they were all sent back under a new order to *Cheshunt*. The parish of *Cheshunt* appealed against this order, and producing the former order, insisted it was conclusive as to the husband, as well as the wife and children. The sessions, however, after hearing evidence as to *Griffin's* settlement, confirmed the new order as to him, and quashed it as to the wife and children. The wife then went back with her children to her husband at *Cheshunt*. After which a third order was made, removing the children again to *Cheshunt*. This was likewise appealed against, and confirmed as to all but two of the children who were under seven years of age, as to whom it was quashed. — By Ld. *Mansfield* C. J. There is nothing in this case. It is admitted that if they had put into the first order, that it was the husband's settlement, that would have been conclusive; and the omission makes no difference. The general rule is, that the husband's settlement is the settlement of the wife. There are some special exemptions; as where the husband is beyond sea. But the presumption is in favour of the general rule; and if this had been the case of an exception, it ought to have been stated. And the rule was made absolute to quash all the orders but the first. Removal of a woman as the wife of *J. G.* to *C.* is good, for it will be presumed that *C.* is the husband's settlement.

Rex v. *Leigh*, *M.* 19 *Geo.* 3. *Doug.* 46. *Cald.* 59. 2 *Bott*, 85. 2 *Nol. P. L.* 143. Two justices removed a married woman and her child from *Ewell* to *Leigh*, in the absence of the husband. On appeal this order was quashed. The husband afterwards returning to *Ewell*, he, together with his wife and child, were re- If the husband return after the wife has been removed, and that order of removal is

R. v. Leigh.

quashed they cannot be removed together to the place of the former removal.

moved under a new order to *Leigh*; which last order the sessions confirmed; but upon a *certiorari*, and a rule to shew cause why it should not be quashed, the counsel gave it up as not to be supported, since the determination of the aforesaid case of *Rex* v. *Hinxworth*. See further, as to the removal of a wife, *ante*, § vii. 4.

The wife may be removed without her husband (he having no settlement) if they consent.

Rex v. *Eltham*, *E.* 44 *Geo.* 3. 5 *East*, 113. 2 *Bott*, 90. 2 *Nol. P.L.* 155. By an order of two justices (which was stated on the face of it to be made on *examination of the husband and with the consent of him and his wife*) *Mary Finn*, wife of *Peter Finn* a *Scotchman*, *who never gained a settlement in England*, and their children were removed from the parish of *St. George the Martyr*, *Southwark*, to *Eltham* in *Kent*. Against this order there was an appeal, which was afterwards dismissed by the sessions without stating any case upon it; and both these orders being removed into the court of K.B. by *certiorari*, it was objected that the wife was removed by such order from her husband who was still living, and probably in the very parish whence she and her children were removed, and whose assent to their separation, even if it could be presumed in favour of the order, was invalid. In *St. Michael's* v. *Nunney* (*ante*, 727.), the Court said, that if the husband were in the parish whence the wife was sent, it would vitiate the order: now that fact is to be collected in this case; for he is stated to have been examined before the magistrates, and to have given his consent to the removal. — But by *Lawrence* J. How does it appear that the husband was living in the parish of *St. George the Martyr*? He might have been before the magistrates without residing there. The order only states, that the wife and children were come to inhabit in that parish. — Ld. *Ellenborough* C. J. Independent of the last mentioned objection, what doubt is there in the case? A *Scotchman*, who has no settlement of his own, and is desirous to give his wife and children the benefit of hers, being unable to maintain them, consents that she should be sent to her parish, to which she herself is willing to go. Why should he not consent? This is nothing like the contract of separation declared to be illegal in *Marshall* v. *Rutton*, 8 *T. R.* 545. Servants, and other persons of that description, members of the same family, who are to subsist by their labour, must frequently separate for that purpose. Here there is neither a private nor a public injury. The Court affirmed the orders. See *Rex* v. *Leeds*, 4 *B. & A.* 498., *post*, p. 745.

A married woman pregnant of a child which when born will be a bastard, is removeable, if the husband be abroad; and shall be for this purpose, as an unmarried woman with child.

Rex v. *Tibbenham*, *E.* 48 *Geo.* 3. 9 *East*, 388. *Bott*, *Cont.* 41. 2 *Nol. P.L.* 198. 221. Upon complaint of the parish officers of *Diss* in *Norfolk*, that *Rebecca Knowles*, *wife of John Knowles*, lately came to inhabit in *Diss*, not having gained a legal settlement there, "and that the said *R. K.* is actually become chargeable to the said parish of *Diss*," two justices, "upon due proof, &c. &c. adjudged the same to be true," and adjudged the lawful settlement of the said *R.* to be in *Tibbenham*, &c. &c. This order was confirmed by the sessions, subject to the opinion of the Court upon the following Case: The pauper's husband *John Knowles* being settled at *T.* had gone to the *East Indies* four years before, and had never returned. At the time of the removal the pauper was residing in *Diss*, and pregnant of a child, which was afterwards born a bastard in *T.*

Removal of a married woman, she being pregnant of a bastard.

R. v. Tibbenham.

The pauper never received any relief from *Diss parish*, nor was chargeable in any other manner than as above-mentioned.— After argument, Ld. *Ellenborough* C. J. The first question is, whether a *married* woman who, in the absence of her husband abroad, is pregnant under such circumstances as that the child when born would be deemed by law a bastard, be liable to be removed under the 35 *Geo.* 3.? The act indeed says, "that every *unmarried* woman with child shall be deemed and taken to be a person actually chargeable within the true intent and meaning of the act," and removeable: but the legislature plainly had in view that every woman pregnant of a child, which was not protected by the matrimony of its parents, but would when born be a bastard, should be removeable, whether married or unmarried: for though the mother were married, yet if her child would by law be a bastard, she was in *pari jure*, within the scope of this act, with an unmarried woman who was pregnant. The next question is, whether the order of removal be good in the form of it? It states the complaint of the parish officers of *Diss*, that *Rebecca*, the wife of *John Knowles*, is *actually become chargeable* to their parish, &c.; and the justices upon due proof made thereof adjudge the same to be true. The act says that a woman under the circumstances I have stated "shall be *deemed and taken to be a person actually chargeable*, &c." Have not then the justices done enough in stating that the pauper was "actually become chargeable to the parish? They are to draw the conclusion whether chargeable or not, and it is enough for them to state that conclusion upon the face of the order, without stating the premises upon which it was founded. If that conclusion be disputed, the party is to appeal; and such appeal having been made, and the facts stated to us, it is to be seen, thirdly, whether the premises warranted the magistrates in drawing that conclusion. The legislature intended that an unmarried woman, or, what is the same for this purpose, a married woman under the circumstances I have mentioned, being with child, is *primâ facie* chargeable within the law: it raises a presumption of her being chargeable. *But I say* again, as I said in *Rex* v. *Alveley*, (*post*, p. 734.) *that if it appears that the woman is a person of substance, and that there is no pretence to say that she is likely to bring a burthen upon the parish*, the act did not intend to make such a person liable to be removed. But it is made a presumptive chargeability, so as to put it on the party disputing it to shew, that she is a person of substance, or, as in the case of *Rex* v. *Alveley*, a person under a contract of hiring and service with another at the time, so as to rebut the presumption. The only cases that materially affect the construction of the clause in question are, first, *Rex* v. *St. Mary Westport*, (3 *T. R.* 44.) which was the case of a certificated person, who under the stat. 8 & 9 *W.* 3. *c.* 30., was not removeable till actually chargeable: and it was held that one of the family of the certificated person, being pregnant of a child likely to be born a bastard, was not removeable under that act. The question was again made in the case of *Rex* v. *Great Yarmouth* (8 *T. R.* 68.) after the passing of the 35 *Geo.* 3., where the residence of a person so circumstanced under a certificate was held to be no objection to her removal. Then came the case of *Rex* v. *Alveley*, where the principal point decided was,

Otherwise, if it appear that she is a woman of substance, and not likely to bring a burthen upon the parish.

Removal of a married woman, she being pregnant of a bastard.

R. v. Tibbenham.

that a single woman being with child did not operate such a dissolution of the contract of hiring and service, as to make her removeable against the consent of herself and her master. In that case there is one observation attributed to me, which I am not prepared to abide by, viz. that where the act says that such a person *may* be removed, it does not say that she *shall* be so. Now I do not think, that the use of the word *may* there, as contradistinguished from *shall*, makes any difference in the sense. If the party come within the true intent and meaning of the clause as there described, I think the true meaning of the words "*may* be removed," is that she "*shall* be removed." All the statutes respecting the removal of the poor form together one system of law, and it is a condition precedent, if I may so say, that the persons to be subjected to their operation should be in the condition of poverty. When therefore the clause in question says that unmarried women with child shall be deemed to be actually chargeable, &c. for the purpose of subjecting them to be removed, it means that persons so situated shall *primâ facie* only be deemed to be chargeable, and it still leaves it open to shew that the party is of substance, so as not to be within the scope and view of the poor laws. Therefore, whether in the form of the order it be said, that the woman so circumstanced is deemed to be chargeable, or is therefore chargeable, or that she is chargeable, it is all alike and equally good: and she must be presumed to be in the situation, in which she is considered by the legislature, viz. as actually chargeable to the parish where she is inhabiting, and consequently liable to be removed, unless the contrary be shewn. Here then it is sufficiently adjudged in the order, that the pauper was actually chargeable, so as to make her removeable under the act, and it appearing by the facts stated on the appeal, that though married, yet that her husband was abroad, and could not have been the father of her child; this was a *primâ facie* case to bring her within the 6th clause, and to shew that she was actually chargeable within the meaning of the act: and nothing being shewn to rebut that presumption, it remains presumptively established that the pauper was within the description of persons liable to be removed. The other judges agreed, and both orders were confirmed.

An order of removal made upon complaint that *M. S.*, the wife of *W. S.*, who is absent from her, is come to inhabit, &c., and is now with child, which is likely to be born a bastard, adjudging the said *M. S.* to be actually chargeable, was held sufficient in form, although the complaint did not

Rex v. *Inskip-with-Sowerby*, *T.* 56 *Geo.* 3. 5 *M.* & *S.* 299. 2 *Nol. P. L.* 198. 220. 222. Two justices removed *Margaret Sykes* from the township of *Inskip-with-Sowerby* to *Pilling* in *Lancashire* by the following order: "County of *Lancaster*, to wit. — Complaint having been made by the churchwardens and overseers of the poor of the township of *Inskip-with-Sowerby* in the county of *Lancaster*, unto us two of H. M.'s justices, &c. that *Margaret Sykes*, the wife of *William Sykes*, a soldier in the army, and absent from her, is come to inhabit in the said township of *Inskip-with-Sowerby*, not having gained a legal settlement there, nor produced any certificate owning her to be settled elsewhere; and that she is now with child, which is likely to be born a bastard, and that her last legal settlement is in the township of *Pilling*, in the said county: We, the said justices, upon due proof made thereof, and likewise upon due consideration had of the premises, do adjudge the said *M. S.* to be actually chargeable to the township of *Inskip-with-Sowerby*, and do also adjudge her last legal settlement to be in *Pilling*." And

then it proceeded to order her removal in the usual way. The sessions, upon appeal, quashed the order for insufficiency of form, because it was not stated in the *complaint*, *that the pauper was become actually chargeable*, subject to the opinion of the court of K. B. as to the validity of this objection. And the Case being called on, the court of K. B., without hearing any argument, were of opinion, that the order of removal was sufficient; for the complaint states the premises from whence the conclusion necessarily arose under the act of parliament (35 *Geo.* 3. *c.* 101.) that the pauper was to be deemed chargeable, and the justices have drawn the conclusion. See *Rex* v. *Ampthill*, 2 *B. & C. ante*, p. 847.

R. v. Inskip-with-Sowerby.

state that the pauper was actually chargeable.

(*b*) Of Removal of Servants.

It hath been observed before, that the justices, upon the complaint of the parish officers, cannot remove the servant from his master; because they cannot upon such complaint dissolve the contract betwixt the master and his servant, to which contract the officers are no parties; for that can only be done upon the complaint of the master or servant. Therefore if a maid-servant shall happen to be with child, which child is likely to be born a bastard, yet if her master is willing to keep her, the parish cannot remove her: but the master, if he pleases, may complain to a justice of the peace, that she is less able to perform the service, and the justice (if he sees cause) may discharge her, and then the parish by order of two justices may remove her.

Whether the servant may be removed from the master.

Rex v. *Brampton*, *H.* 17 *Geo.*3. *Cald.* 11. 2 *Bott*, 317. 1 *Nol. P.L.* 385. 435. 2 *id.* 156. Two justices removed *Hannah Wright* from *Ashover* to *Brampton*. The sessions confirmed the order and stated the following Case: That the pauper being settled at *Brampton*, hired himself to one Mr. *Langsdon* of *Eyam* for a year, and served *till within three weeks of the end of the year, when her master discovering her to be with child, turned her away, and paid her her year's wages, and half-a-crown over;* whereupon she went to her father's at *Ashover*, from whence she was removed as above stated. Upon her examination in Court, she said she was willing to have stayed her year out if she might; but that it was not material to her, as she had received her whole year's wages, and not being half gone with child, she hoped she could have done her work to the end of the year.—After argument, Ld. *Mansfield* C. J. said, the stat. 8 & 9 *W.* 3. *c.* 30., is an explanatory law, and must not be carried beyond the words by construction. It declares that there must be a hiring for a year, and a continuance for a year in that service to gain a settlement: With respect to the hiring in conformity to the nature and object of the act, the Court has been critical and exact; but service, from the nature of the thing, admits often of questions upon the circumstances; as, whether the absence was *with leave*, from *sickness*, *&c.*? But these questions have always been brought to this point, *whether the contract was put an end to within the year?* This cannot be done by dismission of the servant without good and sufficient cause. In *Rex* v. *Castlechurch* (*ante*, p. 438,) there was a discontinuance by agreement, and the contract therefore determined; in such case the payment of the full wages, which might

A maid servant may be discharged by her master for being with child, and may then be removed.

Removal of servants from their service.

R. v. Brampton.

be mere benevolence, could make no difference. The question then is, *is this contract dissolved within the year?* The answer depends upon this, Has the master done *right* or *wrong* in discharging his servant for this cause? I think *he did not do wrong*. The marginal note cited from *Viner*, 18 *Vin. Abr.* 459, whatever degree of authority it may be entitled to, is well warranted in principle. If the master agrees to the contract's going on, the overseers, it is true, shall not take her away because she is with child; but shall the master therefore be bound to keep her in his house? To do so would be *contra bonos mores*; and, in a family where there are young persons, both scandalous and dangerous. Where a servant's absence is said to be *purged* (which is an improper expression) by receiving him again, the receiving only explains and shews the nature of the absence; the consequence of it indeed is, that such reception must generally be considered as amounting to a dispensation, and thereby subjects the master to the payment of the whole wages. But the effect of a positive act of the master, *i. e.* the dismission of his servant under a *criminal* charge, shall never be done away by an implication arising from the payment of the whole wages. — *Willes* J. This case differs from that of *Rex* v. *Richmond*, (*ante*, p. 422.), nor is it like the case of *Rex* v. *Islip*, in 1 *Stra.* 423. (*ante*, p. 410.), where the cause of the discharge was not reasonable. Here, if the master had daughters, it would not be fit that he should keep such a servant; though I think he could not avail himself of the authority of a magistrate; the jurisdiction of the justices being confined to cases in *husbandry*. — *Ashhurst* J. agreed. — Both orders affirmed. And see *Rex* v. *Welford*, tit. Servants. Vol. V. p. 162.

For Mr. *Caldecott's* observation upon the question, whether masters in general may, on reasonable cause, by their own authority discharge their servants; and Ld. *Ellenborough*'s language upon it, in the case of *Spain* v. *Arnott*. See Vol. V. p. 161.

In *Farringdon* v. *Witty*, *E.* 1 *An.* 2 *Bott*, 295. It was determined, that excepting on complaint of the master a servant could not be removed from his master's service, although the parish officers did complain.

But although regularly the servant cannot be removed from the master, yet the master may be removed from the servant: as if the servant hath gained a settlement in the parish, and the master hath gained none, which may often happen, (the settlement of the servant no way depending upon the settlement of the master) in such case, if the parish shall remove the master, they cannot remove the servant; but the master may complain to the justices, who may compel the servant to go along with him.

A single woman, serving a master under a contract of hiring and service, cannot though pregnant of a child which will be born a bastard, be removed from her service, against her consent and his.

Rex v. *Alveley*, *E.* 43 *Geo.* 3. 3 *East*, 563. 2 *Bott*, 546. 2 *Nol. P. L.* 156, 157. Two justices by an order removed *Jane Hinson*, single woman, from the parish of *Kinver*, in the county of *Stafford*, to the parish of *Alveley*, in the county of *Salop*: in which order it was stated, that upon the complaint of the churchwardens and overseers of *K.* to the said justices, "That *Jane Hinson*, single woman, had come to inhabit in the parish of *K.* not having gained a legal settlement there, that the said *J. H.* is with child, and is *therefore deemed* chargeable to the parish of *K.* they the said justices upon due proof, &c. &c." did adjudge the same to be true, &c. &c. proceeding to adjudge the settlement.

Removal from her master's service of a single woman, being pregnant.

R. v. Alveley.

The sessions confirmed the order, and stated the following Case: The pauper was settled by birth in the parish of *Alveley*, and some time previous to *Michaelmas*, 1801, hired herself for a year to *E. C.* of *Dunsby* in the parish of *K.* for a year, at the wages of 4*l*. She entered and served till *September* 2d., 1802, when she being about seven months gone with child, the parish officers of *K.* insisted upon her going before two magistrates for the purpose of being examined as to the place of her settlement, and accordingly took her away from her service on the evening of that day, and the next morning brought her before the magistrates, who made the order of removal. The pauper's master had made no complaints against her, he did not consent to her being taken away, but objected to it, as did the pauper herself, who was perfectly able to do her work. After her examination had been taken she returned to her master's service, and on the following day the parish officers removed her under the order from *Kinver* to *A.* telling her at the same time that she might return to *Kinver*. — Ld. *Ellenborough* C. J. If the order of removal were good, no doubt it would operate to dissolve the contract. In *Rex* v. *Kenilworth*, (*ante*, p. 442. and *post*, § XVII. (6. *b.*) the order of removal being unappealed from, was deemed valid; but this is now under appeal, and may be controverted. And that brings it to the question, whether the order were properly made? Was it not the meaning of the act to prevent the removal of persons until actually chargeable, who were before removeable, if likely to become so; but not to make persons removeable who were not proper objects of removal before that act? Could it be meant that a person in this situation should be torn away from her parents, whatever her condition in life may be, and however far removed from any probability of being a charge on the parish? Is there any instance to be found in the books before this act, of a woman, under these circumstances, being a person of substance, and yet deemed to be removeable? The substance of a person so situated repels the idea of her being chargeable; and the act did not mean to make any one removeable who was not so antecedently to the passing of the act. The general provision is, that no person shall be removeable till actually chargeable; and the 6th section introduces an exception to that general rule, leaving the person so circumstanced to the operation of the law as it stood before the passing of the act. [The respondent's counsel observed, that there were no facts stated in the case to shew that the woman was not a person who was likely to become chargeable at the time of the order made, or that the removing magistrates had not exercised their judgement upon that fact; on the contrary, they adjudge her to be chargeable, and before the act in question, such a person was removable.] — Lord *Ellenborough* C. J. There is nothing of that sort stated in the case, nor any thing in the order itself to shew that the magistrates adjudged her to be chargeable, otherwise than as a consequence of law in their understanding of the act of parliament; they adjudge *that she is with child*, "and is *therefore* deemed chargeable to the parish of *Kinver*." But though the act says, that such a person shall be "deemed and taken to be actually chargeable;" yet that must be understood to be *secundum subjectam materiam*, or as the act itself expresses it, "chargeable within the true intent and meaning of this act,"

R. v. Alveley. which I have before explained. It lies upon the respondents to shew, that before this passed, the mere circumstance of a single woman in the service of another being with child, operated as a dissolution of the contract, and made her liable to be removed against the consent both of the master and servant. Orders quashed.

(c.) Of Removals under stat. 35 G. 3. c. 101. § 6.

[See the case of *Rex* v. *Tibbenham*, *ante*, p. 730.]

Order adjudging merely that the woman removed was *with child and unmarried*, without drawing the conclusion that she was *chargeable*, is bad.

Rex v. *Holm*, *East Waver Quarter*, *T.* 49 *G.* 3. 11 *East*, 381. *Bott*, *Cont.* 44. 2 *Nol. P. L.* 198. (See stat. 35 *Geo.* 3. *c.* 101. § 6. *ante*, p. 726.) An order of removal of *E. M.* single woman, from *Oulton Quarter* in the parish of *W.* to *Holm*, *East Waver Quarter*, in the parish of *Holm Cultram*, stated "That upon complaint, &c. &c. that *E. M.*, single woman, hath come to inhabit in the said *Oulton Quarter*, not having gained a legal settlement, nor produced any certificate, owning her to be settled elsewhere, and that the said *E. M.* is *with child and unmarried*, we the said justices *do adjudge the same to be true*, and we do likewise adjudge that the lawful settlement of the said *E. M.* is in the said *Holm*, *East Waver Quarter*, &c. &c." The sessions confirmed the order, The objection to the order was, "That it ought to have adjudged that the pauper was *actually chargeable*, and that it was not sufficient merely to state that she *was with child and unmarried*." And *Rex* v. *Alveley* was cited in support of the objection. — Ld. *Ellenborough*, C. J. If it were an irrefragable conclusion that, being a single woman and with child, the party removed must be deemed to be chargeable within the meaning of this statute, then this order would be good, otherwise the justices ought to have drawn that conclusion, in order to shew that in their judgement she was a proper object of removal within the poor laws. But, consistently with this order, the party might have been a single woman with child worth 10,000*l.* or she might have given the most ample security to the parish against any charge which could be thrown upon them. The statute in question first gives the general rule, that no persons shall be removed before they are actually chargeable. It then says, that single women with child shall be *deemed and taken to be* actually chargeable within the true intent of the act. But still the justices ought to draw the conclusion that she is within that general rule, otherwise every single woman with child, whatever might be her substance, might be removed by the parish officers. Being unmarried and with child, such a person is presumptively chargeable, from the strong probability of the fact that she must be so; but there may be circumstances, such as the substance of the party, or the giving a complete indemnity to the parish, which may exclude that presumption. Now every circumstance of that sort might have existed in this case, and yet the order, as it is framed, be true. In *Rex* v. *Diddlebury* (*infra*), the justices deemed her to have become chargeable; but she could not have been deemed to be chargeable, if those circumstances had existed in her instance. It ought to appear by the order that the justices have exercised their judgement upon the matter, and repelled the existence of such circumstances by the adjudgment that she was chargeable in order to shew that she was

a proper object of removal within the meaning of the law. Orders quashed.

Removal of a single woman, being certificated, and pregnant.

N.B. — It was observed by the counsel for the orders that the magistrates had been misled by a precedent stated in a new edition of *Burn*, published since the statute, and since the author's death: But see the form of an order of removal, *post*, page 749. where the requisite alteration is adverted to.

An order of removal founded on stat. 35 G. 3. c. 101. § 6. stating that *A. E.* single woman, was by being pregnant deemed to have become chargeable, &c. is good.

Rex v. *Diddlebury*, *E.* 47 *Geo.* 3. 9 *East*, 398. *Bott*, *Cont.* 44. 2 *Nol. P. L.* 214. Upon complaint, "That *Ann Evans*, *single woman*, had come to inhabit, &c. &c. and *is, by being pregnant, deemed to have become chargeable* to the said parish of *T.*" two justices, "upon due proof made thereof, as well upon the examination of the said *Ann Evans* upon oath, as otherwise, and likewise upon due consideration had of the premises, did adjudge the same to be true, and that the lawful settlement, &c. &c." The sessions, upon appeal, found specially, that the pauper *Ann Evans* being a single woman legally settled in *D.* and becoming *actually chargeable* to *T.* within the meaning of the statute (35 *Geo.* 3. *c.* 101. § 6.) *by being pregnant with a child who had since been born a bastard*, was removed from *T.* to *Diddlebury*, and that the pauper appearing to be a *labourer without substance*, the mother of other bastard children, and not a hired servant, was properly removed *as actually chargeable*; therefore they confirmed the order of removal. It was contended against the orders, that by the case of *Rex* v. *Alveley* (*ante*, p.734.), it ought to have been alleged on the face of the order of removal, that the pauper was actually chargeable in fact, and not merely as an inference of law, from the fact of her being pregnant; since that inference did not arise from the mere fact of pregnancy, without other circumstances, shewing that the pauper was in such a situation as before the 35 *Geo.* 3. would have made her liable to be removed as a person likely to become chargeable; and that this defect in the order could not be helped by the finding of the sessions in the case, that she was a labourer, &c. This case was argued in the *Hilary* term, immediately after the case of *Rex* v. *Tibbenham, ante*: they both stood over till this *Easter* term, and after giving judgment in that case, Ld. *Ellenborough* C. J. said, That there was little more to add with respect to this, than that the orders should be confirmed. On the facts of the case, as bringing it within the general policy of the poor laws, and the words of stat. 35 *Geo.* 3. there could be no doubt, and with respect to the form of the order of removal, the premises are stated, as in the statute itself, from whence the conclusion is drawn; and therefore all is stated which the statute requires. Orders confirmed.

An unmarried woman being pregnant may be removed, though she be residing under a certificate.

Rex v. *Great Yarmouth*, *M.* 39 *Geo.* 3. 8 *T. R.* 68. 2 *Bott*, 545. 2 *Nol. P. L.* 197. *Mary Pestile*, widow, was removed from *Great Yarmouth* to *Ditchingham* in *Norfolk*. The sessions quashed the order for informality, but did not state any case for the opinion of the Court. But in the order of removal it was cited and adjudged, that the pauper was with child, which was likely to be born a bastard; that she was living in *Great Yarmouth*, not having gained a settlement there; that she was deemed to be a person actually chargeable to *Great Yarmouth*, and that her place of settlement was at *Ditchingham*; without negativing her having a certificate from any parish. Both the orders hav-

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ing been removed by *certiorari*, a rule was obtained to shew cause why the order of sessions should not be quashed: against which, on shewing cause, after stating the question intended to be raised in this case to be, whether or not the statute 35 *Geo.* 3. *c.* 101. extends to an unmarried woman who is residing under a certificate, it was argued in the negative; because no mention is therein made of certificated persons; that if the act did not extend to such persons, the order was defective in not negativing that the pauper was living at *Great Yarmouth* under the certificate, for that in *Rex* v. *St. Mary Westport*, (*ante*, 709.) it was ruled that the pregnancy of a certificated person was no ground for removing her as a person actually chargeable, and consequently, if this person were living under a certificate, she was not liable to be removed.—*Per Curiam:* The orders which alone are before the Court are scarcely sufficient to raise the question, that (it is said) was meant to be agitated, but even if they were, this pauper comes within the words of the statute alluded to, which are general, "every unmarried woman, &c.;" and also within the reason of the act. This clause seems to have been introduced for the very purpose of remedying what was before an apparent defect in the poor laws; for before that act passed, a certificated person in this situation could not have been removed, although the child when born would be settled in the certificated parish. Therefore as the words of the statute are sufficiently comprehensive to include this case, there is no reason why we should narrow or abridge the construction of them so as to prevent their extending to a case that wanted the remedy. Rule absolute.

Servant.

A servant well settled being with a master removeable cannot be removed with him, but the master may complain upon the retainer. *Sett. & Rem.* 211.

Bastards.

How far Bastards are removable from their mother. See § VII. (3.) p. 278.

(*d*) Of casual Poor.

A labourer, who, in passing through a parish with a loaded cart breaks his leg by accident, is to be considered as casual poor, and as such not removeable under 13 & 14 C. 2. c. 12., or 35 G. 3. c.101.

Rex v. *St. James* in *Bury St. Edmunds*, *T.* 48 *Geo.* 3. 10 *East*, 25. *Bott*, *Cont.* 47. 2 *Nol. P. L.* 161, 162. Two justices by an order in the usual form, reciting the complaint of the churchwardens &c. of the poor of the parish of *St. James*, &c. that *Samuel Offord* did lately *come to inhabit* in the said parish, not having gained a legal settlement there, and that he was then actually chargeable, &c. removed him from *St. James* in *Bury* to *Ixworth*. And the order was quashed upon appeal.—Case: The pauper being settled in *Ixworth*, was employed on the 23d of *December*, 1807, as a day-labourer, by *R. H.* of *Ixworth*, to drive a load of hay to *St. James's* in the town of *Bury*, and to return with a load of muck. In loading the muck, he fell and broke his leg. *December* 24th, two magistrates took the pauper's examination, made out the order of removal, and (the pauper being unable to be moved) suspended the execution by an indorsement on the back of the order. The pauper was attended by a surgeon, by the order of the parish officers of *St. James*, and the expense of 16*l.* 1*s.* 1*d.* was incurred for his cure and maintenance. *April* 1st, 1808, the pauper being able to move, the magistrate took off the suspension, and made the order for payment of the 16*l.* 1*s.* 1*d.* for the expenses, by indorsing the same; and on the same day

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the order was executed, and the pauper conveyed to *Ixworth.* — Ld. *Ellenborough* C. J. No person is removable from the parish where he is, but by positive statute. The 13 & 14 *C.* 2. *c.* 12. *ante*, 721, 722, (the statute which confers the power of removing) after reciting that poor people endeavour to settle themselves in those parishes where there is the best stock, &c., and when they have consumed it, then to another parish, &c., says, that it shall be lawful, on complaint of the parish officers, within forty days after any such person *coming so to settle as aforesaid, in any tenement under the yearly value of* 10*l.* for any two justices of the peace of the division where any person likely to be chargeable to the parish shall *come to inhabit*, by their warrant to remove him to the place of his last legal settlement. The expression of *coming to settle*, denotes, that the party comes *animo morandi* or *manendi*: it may be for a temporary purpose, but still it must be understood that he comes to settle there. But how can it be said that the pauper went into this parish *animo morandi* at all? He went into the town with a cart of hay, which he was to dispose of, and return with a load of muck. How then can it be said that he went there to settle? Then if he were not removeable within the terms of the 13 & 14 *C.* 2. can we find any enlargement of the power of removal? The 35 *Geo.* 3. has the words *inhabiting* or *sojourning*; but it would be an extravagant construction of either of those terms to say that it meant to include such a case as this. Then there is no authority for this order, and the sessions have done right to quash it. — *Grose* J. agreed, as did *Le Blanc* J. and *Bayley*, J.; and *Le Blanc* J. said, that the 35 *Geo.* 3. *c.* 101. was meant to provide, that persons who by law were before removeable, if likely to become chargeable, should not be removed till actually so; and to make provision for suspending the order of removal, when made in case of sickness or infirmity, and that the expenses incurred in the care and maintenance of the persons, between the order to remove and the actual removal of them, should be defrayed by the parish to which they should be found to belong.

Removal of a pauper, who had been se backwards and forwards from one parish to another, and been occasionally relieved by both; held good.

Rex v. *Birmingham*, *T.* 51 *Geo.* 3. 14 *East*, 251. *Bott*, *Cont.* 49. 2 *Nol. P. L.* 163. *Mary Hoppins* and her children were removed from *Feckenham* to *Birmingham*, *Warwickshire*: the sessions confirmed the order.—Case: The pauper *M. H.* was resident in the parish of *Inkberrow*, in *Worcestershire*, renting a house there, and receiving relief from *I.* — Upon applying as usual for this relief, to the officers of the parish, it was refused her, and she was desired to go to the officers of *Feckenham*, an adjoining parish, in which some of her husband's relations had resided; this she did: *F.* refused relief, and sent her back to *I.* — Upon her return to *I.* and again applying there for relief, they refused, and desired her to apply again to *F.*; and when she expressed an unwillingness to do so, one of the overseers of *I.* took her to *F.*, without any order of removal, and told her not to return again to *I.* — Upon her being thus brought to *F.* the officers of *F.* relieved her, and at the same time threatened to send her to prison if she returned to *I.* She remained in *F.* for eight or ten days, not having previously had any abode there; at the end of that time she was removed by an order of two magistrates from *F.* to *Birmingham.* — The question was, Whether the pauper being in the

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parish of *F.* under such circumstances was likely to be so removed? Against the order of sessions, *Rex* v. *St. James*, in *Bury St. Edmund's* (*supra*), was cited to shew she was irremovable, as casual poor.—Lord *Ellenborough* C. J. That was a very different case. This was the case of a starving vagrant, in whichever of the two parishes she was, who was going backwards and forwards between them, and would have been starved, if she had not received temporary relief from one or the other. She was liable to be removed from either. How then can this oscillation between the two parishes affect the order of removal to her proper parish? Orders confirmed.

Where a pauper legally settled in the parish of *A.*, having met with a severe accident in the parish of *B.* was carried to an adjacent parish to be cured, and remained there for a long period of time: Held that he was to be considered as casual poor in the parish of *C.*, and was irremoveable, and that an order of removal to *A.* suspended under the powers of 35 G. 3. c. 101., and a subsequent order on the overseers of *A.* to pay the intermediate charges incurred by the parish of *C.* were invalid.

Rex v. *The Inh. of St. Lawrence, Ludlow*, *T.* 2 *Geo.* 4. 4 *B.* & *A.* 660. 2 *Nol. P. L.* 162. Removal from *St. Lawrence, Ludlow*, to *Leinthall Starks*, both in *Shropshire*. The sessions discharged the order, subject, &c. Case:—On the 31st of *October*, 1818, *George Thomas*, the pauper, was sent with his master's team for coals, and on the road, in the parish of *Bromfield*, was thrown down by the horses, by which means his thigh was fractured; the accident took place about half a mile from *Ludlow*, in the parish of *Bromfield*. A person passing by with an empty waggon took the pauper to *Ludlow*, to the *Bell* Inn, which is in the parish of *St. Lawrence, Ludlow*, where the pauper was taken in, and where he remained for the space of 14 weeks, during which time he was attended by a surgeon, who reduced the fracture. The overseers of *Ludlow* came to the *Bell* the same day, and examined the pauper, and directed the mistress of the house to take care of him: they also were present when the surgeon was there. On the 4th *November*, an order of removal was made by the magistrates, removing the pauper to the parish of *Leinthall Starks*, his place of settlement. There was also an order of suspension made at the same time. On the 17th *July* following an order for the charges incurred by *St. Lawrence, Ludlow*, was made, under the power given by stat. 35 *G.* 3. *c.* 101. It was objected, that, under the facts above stated, the magistrates had no power of removal, and the sessions being of that opinion, discharged the orders. In support of the order of sessions:—The case of *Rex* v. *St. James's*, in *Bury St. Edmunds*, was cited as directly in point. *Contra.* The case of *Rex* v. *Birmingham*, in which it was contended that the authority of *Rex* v. *St. James's*, in *Bury St. Edmunds*, was somewhat shaken. *Sed per Abbott* C. J. I am of opinion, that in this case the sessions were right in holding that the pauper was irremoveable. The case of *Rex* v. *St. James's* in *Bury St. Edmunds*, seems to me to have been most correctly decided, and I do not think the present case materially distinguishable from it. But it is said, that *Rex* v. *Birmingham* is at variance with its authority. I am not of that opinion; but if it were necessary to decide between the two cases as conflicting authorities, I should adhere to the opinion of the Court in *Rex* v. *St. James's*, in *Bury St. Edmunds*. For the statute 13 & 14 *Car.* 2. *c.* 12., only gave a power of removal of those paupers who were coming to settle. Now how can it be said that this pauper was coming to settle in *St. Lawrence, Ludlow*?—Nor does the 35 *G.* 3. *c.* 101. make any difference; for previously to the passing of that act, a pauper under these circumstances could not have been removed; and that act only regulated the powers of removal already existing, but did not give any new power to the magistrates for remov-

ing paupers who were irremoveable before. The order of sessions is therefore right, and must be confirmed. Order of sessions confirmed. R. v. St. Lawrence, Ludlow.

(*e*) Of the Removal of poor Persons born in Scotland, Ireland, &c., not having committed Acts of Vagrancy.

By stat. 59 *Geo.* 3. *c.* 12. § 33. reciting, whereas poor persons, born in *Scotland* and *Ireland*, and in the isles of *Man*, *Jersey* and *Guernsey*, frequently become chargeable to parishes in *England*, and no provision is made for the removal of any such poor person, unless he or she shall have committed some act of vagrancy, and shall be adjudged to be a rogue and vagabond; and no person so adjudged can be lawfully removed without having been first publicly whipped or imprisoned in the house of correction: and whereas it is expedient to authorise the removal of such poor persons, although they may not have committed any act of vagrancy, and to authorise justices of the peace to cause such of them as may be adjudged to be rogues and vagabonds, to be conveyed by a pass, without having been first whipped or imprisoned: It is enacted, that it shall be lawful for two justices of the peace, and they are hereby required, upon the complaint of the churchwardens and overseers of the poor of any parish, that any person born in *Scotland* or in *Ireland*, or in either of the isles of *Man*, *Jersey* and *Guernsey*, hath become chargeable to such parish, by himself or herself, or his or her family, to cause such person to be brought before them, and to examine such person, and any other witness or witnesses, on oath, touching the place of the birth or last legal settlement of every such person, and to inquire whether he or she, or any of his or her children, hath or have gained any settlement in that part of the U. K. called *England*; and if it shall be found by such justices, that the person so brought before them was born in *Scotland* or *Ireland*, or in either of the isles of *Man*, *Jersey* and *Guernsey*, and hath not gained any settlement in *England*, and that he or she hath actually become chargeable to the complaining parish, by himself or herself, or his or her family; then such justices shall and they are hereby empowered by a pass (B. D.) under their hands and seals, in the form or to the effect prescribed by the act passed in the seventeenth year of the reign of his late Majesty King *George* the second, to amend the laws relating to rogues and vagabonds (*mutatis mutandis*), to cause such poor person, his wife, and such of his or her children so chargeable as shall not have gained a settlement in *England*, to be removed to the place of his or her birth or last legal settlement, in the manner by the said act directed for the removal of rogues and vagabonds to *Scotland* and *Ireland*, and the isles of *Man*, *Jersey* and *Guernsey*; and all constables and other officers, and all masters of vessels, are hereby required to convey every person so to be passed in the manner by the said act directed for the conveyance of rogues and vagabonds.(*a*)

59 G. 3. c. 12.

Power to two justices to remove chargeable poor born in Scotland, Ireland, &c. although they have not committed any act of vagrancy.

B. D.

17 G. 2. c. 5. § 7—14.

(*a*) By stat. 17 *Geo.* 2. *c.* 5. § 7. it is enacted, That where any rogues o vagabonds, apprehended by any constable or other officer, shall be brought before any justice or justices, such justice or justices are hereby required to inform himself or themselves, by the examination upon oath of the person or persons appre-

17 G. 2. c. 5. § 7—14.

Justices to punish vagabonds

By stat. 59 G. 3. c. 12. § 33., the wife and unemancipated children of a *Scotchman*, who has not acquired any settlement in *England*, must, if chargeable, be sent by a pass along

Rex v. *The Inhab. of Leeds*, E. 2 *Geo.* 4. 4 *B. & A.* 498. 2 *Nol. P.L.* 250, 251. Two justices, by their order, removed *Hannah*, the wife of *Thomas Robinson*, and *Thomas*, *Hannah*, and *Elizabeth*, her children, from the township of *Leeds* to the township of *Almondbury*, both in the W.R. of the county of *York*. The sessions, upon appeal, discharged the order, subject, &c. Case: — *Thomas Robinson*, the husband of *Hannah Robinson*, was a *Scotchman*, residing at *Leeds* with his family, and had not acquired any settlement in *England*. Not being able to maintain his wife and children, they were obliged to apply for relief to the township of *Leeds*, and were ac-

17 G. 2. c. 5.

&c. taken on privy search.

hended, or of any other person, of the condition and circumstances of the person or persons so apprehended, and of the parish or place, where he, she, or they were last legally settled; the substance of which examination or examinations shall be put into writing, and be subscribed or signed by the person or persons so examined; and the said justice or justices shall likewise sign the same, and transmit it to the next general or quarter sessions of the peace to be holden for the same county, riding, city, borough, town corporate, division or liberty, there to be filed and kept on record; and such justice or justices of the peace are impowered, if they think convenient, by a pass under hand and seal, in the manner and form hereinafter directed*, to cause such persons to be conveyed to the place of their last legal settlement; but if it cannot be found, then to the place of their birth; or if such persons, or any of them, be under the age of fourteen years, and have any father or mother living, then to the place of the abode of such father and mother, there to be delivered to some churchwarden, chapelwarden, or overseer of the poor of such parish, town or place; which pass shall be in the form, or to the effect following:

How vagabonds to be passed.

To the constable of - · in the county of - · [*or to the tythingman or other officer, as the case shall be; or if the offender is committed to the house of correction, then to the governor or master thereof*] and also to all constables and other officers whom it may concern, to receive and convey; and to the churchwardens, chapelwardens or overseers of the poor of the parish, town or place [*as the case shall be*] of ——— in the county of ———, or either of them, to receive and obey.

Form of pass.

WHEREAS ——— was [*or were*] apprehended in the parish of ——— [*or in the town of* ——— *or other place, describing it*] as a rogue and vagabond, *or* as rogues and vagabonds, *viz.* wandering and begging there [*or as the case shall be*] and upon examination of the said ——— taken before ——— upon oath [which examination is hereunto annexed] it doth appear, that his, her, or their last legal settlement is at ——— in this county [*or, in the county of* ———] *or*, that the said ——— was [*or were*] born in the parish of ——— in this county [*or, in the county of* ———] and hath [*or have*] not since obtained any legal settlement; *or* that the said ——— is [*or are*] under the age of fourteen years, and hath [*or have*] a father or mother living or abiding in the parish [*or town*] of ——— [*or other place, describing it.*] These are therefore to require you the said constable or other officer, [*or governor or master of the house of correction, as the case shall be,*] to convey the said ——— in the next direct way to the said parish [*or town*] of ——— [*or other place*] within the said county, and there to deliver him [*her or them*] to some churchwarden, chapelwarden or overseer of the poor of the same parish [*town or place*] to be there provided for according to law [*or in case the said parish, town or place to which such person or persons is or are to be sent, lies in some other county, riding, division, corporation or franchise having separate general or quarter-sessions of the peace, then the form shall be as followeth*, viz., to convey the said ——— to the parish [*or town*] of ——— that being the first parish [*or town*] in the next precinct through which he [*she or they*] ought to pass in the direct way to the said parish [*or town*] of ——— to which he [*she or they*] is [*or are*] to be sent, and to deliver him [*her or them*] to the constable or other officer of such first town [*or parish*] in such next precinct, together with this pass, and the duplicate of the examination of the said ———, taking his receipt for the same; and the said ——— is [*or are*] to be thence conveyed on in like manner to the said parish

* [See stat. 32 *Geo.* 3. *c.* 45. § 1.]

tually chargeable to that township at the time of granting the order of removal. Under these circumstances, he consented that his wife and children should be removed to *Almondbury*, which was the place of his wife's maiden settlement. It was objected, by the counsel for the appellants, that by stat. 59 *G.* 3. *c.* 12. § 33. the wife and family (the children not having gained any settlement in their own right) could not be sent by an order of removal to her maiden settlement, but ought to be sent by a pass under that act, along with the husband, to *Scotland*. The sessions were of that opinion, and accordingly discharged the order

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with the husband to *Scotland*, and cannot be removed to the maiden settlement of the wife.

[*or town*] of ——— there to be delivered to some churchwarden, chapelwarden or overseer of the poor of the same parish [*town or place*] to be there provided for according to law; and you the said churchwardens, chapelwardens and overseers of the poor, are hereby required to receive the said person [*or persons*] and provide for him [*her or them*] as aforesaid.

17 G. 2. c. 5.

§ 10. And to prevent unnecessary expence in the passing or conveying of rogues, vagabonds and incorrigible rogues, it is enacted, That the justice or justices of the peace who shall make the pass, shall, at the same time, with the said pass, cause likewise to be delivered to the constable, or other officer appointed to convey them, a note or certificate, ascertaining how they are to be conveyed, by horse, cart, or on foot, and what allowance such constable or other officer is to have for conveying them (according to the rates or allowances appointed by the general or quarter-sessions of the peace, as is hereinafter directed) in the form, or to the effect following, viz:

Justices to regulate passes.

WHEREAS by a pass [*reciting the substance or effect of the said pass*] I [*or we*] do hereby order and direct the said person [*or persons*] to be conveyed on foot [or *in a cart* or *by horse, &c.*] to the said town [*or parish*] of——— in ——— [or *other place, describing it*] in the way to such parish [*town or place, as the case shall be*] in ——— days time; for which the said constable, [*&c.*] is to be allowed the sum of ——— and no more.

Given under my hand [or our hands] *this day, &c.*

Form of certificate.

By § 11. The constable, or other officer, who shall receive such pass and certificate, shall, and is hereby required, to convey or cause to be conveyed, the person or persons named in such pass, in such manner, and in such time, as by the same pass shall be directed, the next direct way to the place where he, she or they are ordered to be sent, if such place be in the same county, riding, division, corporation or franchise, where the said person or persons were apprehended; but if the place to which the person or persons so apprehended is or are to be sent, lies in some other county, riding, division, corporation or franchise, he shall deliver the said person or persons to the constable or such other officer of the first town, parish or place, in the next county, riding, division, corporation or franchise, in the direct way to the place to which such person or persons is or are to be conveyed, together with the said pass and duplicate of examination, taking his receipt for the same; and such constable or other officer shall, without delay, apply to some justice of the peace in the same county, riding, division, corporation or franchise, who shall make the like certificate as before (*mutatis mutandis*) and deliver it to the said constable or other officer, who shall, and is hereby required, with all speed to convey the person or persons unto the first parish, town or place in the next county, riding, division, corporation or franchise, in the direct way to the place to which such person or persons is or are to be conveyed; and so in like manner from one county, riding, division, corporation or franchise to another, till they come to the place to which such person or persons is or are sent; and the constable or other officer, who shall deliver such person or persons to the churchwarden or other person ordered to receive them by such pass, shall, at the same time, deliver the said pass, with the duplicate of examination, taking their receipt for the same; and if the churchwarden or other person, who shall receive any person so sent, shall think the examination to be false, he is hereby impowered to carry the person so sent before some justice of the peace, who, if he see cause, may commit such person to the house of correction till the next quarter-sessions, and the justices there, if they see cause, may deal with such person as an incorrigible rogue; but the person so sent shall not be removed from the place to which sent, but by order of two

Duty of officers with pass and certificate.

R. v. Leeds. of removal. Against the order of sessions the case of *Rex* v. *Eltham, ante*, p. 730., was cited and relied upon. — *Abbott* C. J. This question arises out of the compulsory power formerly vested in justices of the peace, of removing a wife from her husband, by consent: and it is one, and that not the smallest of the evils attendant on the poor laws, that cases should have arisen under them, in which this Court has held, that such a removal, amounting to a temporary divorce, might lawfully be made. It is to be observed, however, that in *Rex* v. *Eltham* there was the consent of both husband and wife to the separation. I am very glad that

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17 G. 2. c. 5. justices, in the same manner as other poor persons are removed to the place of their settlement.

Regulations for passing vagrants into Scotland. A.

By § 13. The constable or other officer of any parish or place, within the counties of *Cumberland, Northumberland, Durham* or town of *Berwick-upon-Tweed*, shall, and they are hereby authorized and required, upon any person or persons being delivered to them by a pass (A.) and examination, who shall have been apprehended within the said counties or town, or brought to them according to the direction of this act, whose place of legal settlement is in that part of *G. B.* called *Scotland*, to deliver the said examination to the clerk of the peace for such respective county, to be kept among the records of the sessions of that county, and to convey or cause to be conveyed, such person or persons, with the said pass, into the next adjoining shire, stewartry or place in that part of the U. K.; and to deliver him, her or them to some constable or other officer of the next parish, district or place within the said shire, stewartry or place, taking his receipt for him, her or them; and such officer is hereby required to receive such person or persons, and give such receipt, and to dispose of him, her or them according to law; and in case any such vagrant, after being so sent and conveyed into that part of *G. B.* called *Scotland*, shall, after being so sent as aforesaid, be found wandering, begging or misbehaving him or herself within that part of *G. B.* called *England*, contrary to the true intent and meaning of this act; every such person so offending shall be deemed an incorrigible rogue, and be punished as incorrigible rogues are to be punished by this act.

C.

'§ 14. Reciting that divers vagrants have been conveyed from county to 'county, in order to be sent to places in *Ireland*, (C.) the Isles of *Man, Jersey*, '*Guernsey* or *Scilly* (their last legal settlement) but for want of authority to compel masters of ships and vessels to take them on board, in order to be carried 'thither at reasonable rates, they may be very chargeable to the maritime counties, towns and places in *England* and *Wales*, where they may lie for such 'exportation;' It is enacted, That all and every master and masters of any ship or vessel or packet boat bound for *Ireland*, the Isles of *Man, Jersey, Guernsey* or *Scilly*, shall, and they and each of them is and are hereby required, upon warrant (E.) to him or them directed under the hand and seal of a justice of the peace of the county, town or place where such ship, vessel or packet boat shall lie, to take on board the same such vagrant and vagrants as shall be named and expressed in the said warrant, and convey him, her or them to such place in *Ireland*, the Isles of *Man, Jersey, Guernsey* or *Scilly*, as such ship, vessel or packet boat shall be bound to or shall arrive at; and for the charges thereof such master shall take, and the constable or person who serves him with the said warrant shall pay him such rate *per* head, as the justices of the peace at their quarter-sessions shall from time to time appoint for every such vagrant so brought and delivered to him; and such master shall and is hereby required, on the back of the said warrant, to sign a receipt for the money so paid, and also for the vagrant or vagrants so brought and delivered; which warrant so endorsed shall then be produced to the justice of the peace who signed and sealed the same, and upon his allowance thereof, under his hand, the money so paid shall be repaid by the county, in such manner as by this act the money to be paid for conveying vagrants from county to county is directed; and every master of such ship, vessel or packet boat, neglecting or refusing to receive on board, or to transport such vagrant or vagrants, or to indorse and sign such receipt as aforesaid, shall forfeit 5*l.* to the use of the poor of the parish or place where the offence shall be committed; to be levied by distress and sale of the said ship, or any goods within the same, by warrant under the hand and seal of any justice of the peace for the same county, city or

Regulations for passing vagrants into Ireland, &c. E.

Masters of ships refusing to take vagrants on board. Penalty.

we are relieved by this act of parliament from the necessity of considering those cases. I think it impossible to read the words of the 33d clause without seeing that the magistrates have now the power, in cases like the present, of sending the husband, together with his wife and family, by a pass to *Scotland;* and, having this power, I am of opinion that they cannot now remove the wife and family, to her maiden settlement, so as to separate her from her husband. I think, therefore, that the order of sessions was right, and ought to be confirmed. — *Bayley* J. It is against public policy and good morals, to permit the R. v. Leeds.

town corporate, returning the overplus (if any be) upon demand, after the said penalty and charges of levying the same are satisfied. 17 G. 2. c. 5.

(A.) Vagrant Pass to *Scotland.* A.

County of —— } To the constable of —— in the said county of *W.* and also to all constables and other officers whom it may concern, to receive and convey; and to all constables and other officers within that part of *G. B.* called *Scotland,* whom it may concern, to receive and obey.

WHEREAS *A. O.* was apprehended in the town of —— aforesaid, in the county of *W.* aforesaid, as a rogue and vagabond, and is duly convicted before me *J. P.* esquire, one of H. M.'s justices of the peace in and for the said county of *W.*, [of being a rogue and vagabond], for that he the said *A. O.* did [*state the act of vagrancy as the case may be*], and upon examination of the said *A. O.* taken before me the justice aforesaid upon oath, (which examination is hereunto annexed), it doth appear that his lawful place of settlement is in that part of *G. B.* called *Scotland;* These are therefore to require you the said constable of —— aforesaid, in the county of *W.* aforesaid, to convey the said *A. O.* to the town of —— in the county of ——, that being the first town in the next precinct through which he ought to pass, in the direct way to that part of *G. B.* called *Scotland* aforesaid, to which he is to be sent, and to deliver him to the constable or other officer of such first town, in such next precinct, together with this pass, and the duplicate of the examination of the said *A. O.* taking his receipt for the same; and the said *A. O.* is to be thence conveyed on in like manner into the next adjoining shire, stewartry, or place in that part of *G. B.* called *Scotland* aforesaid, and is there to be delivered to some constable or other officer of the next parish, district, or place within such next adjoining shire, stewartry, or place aforesaid, taking his receipt for the same; and such next officer in that part of *G. B.* called *Scotland* aforesaid, is hereby required to receive the said *A. O.* and give such receipt as aforesaid, and to dispose of him the said *O. A.*, according to law. And I do hereby certify, that the said *A. O.* hath been actually publicly whipped [*or* confined in the house of correction for the space of ——]. Given under my hand and seal this —— day of —— in the year of our Lord ——.

(B.) Vagrant Pass to *Scotland,* on Stat. 59 *Geo.* 3. *c.* 12. § 33. B.

To the constable of the parish of —— in the county of ——, and also to all constables and other officers whom it may concern, to receive and convey; and to all other officers of the peace whom it may concern, to receive and obey.

County of —— to wit. } WHEREAS complaint hath been made by the churchwardens and overseers of the poor of the parish of —— in the said county of —— unto us, whose names are hereunto set, and seals affixed, two of H. M.'s justices of the peace, acting in and for the said county (one being of the quorum) that *A. P.* a person born in *Scotland,* hath become and is now actually chargeable to the said parish of ——, and whereas, upon examination of the said *A. P.* taken upon oath before us, (which examination is hereto annexed) it doth appear, and we do adjudge, that the lawful place of settlement of the said *A. P.* is in that part of the U. K. called *Scotland;* and that he hath a wife named —— and —— children; viz. —— neither of which children have gained any settlement in *England.*

These, are, therefore, to require you the said constable of the parish of —— aforesaid, in the county of —— aforesaid, to convey the said *A. P.*, his wife and children aforesaid, to the town of *L.* in the said county of *C.*, that being the first town in the next precinct through which they ought to pass, in the direct

R. v. Leeds. separation of husband and wife, even with their consent. This question, however, turns on the construction of stat. 59 *Geo.* 3. *c.* 12. § 33., which enacts, that it shall and may be lawful for the magistrates, and they are thereby required, in certain specified cases, to cause persons born in *Scotland*, &c. to be brought before them. Now these are words of compulsion on the magistrates to institute proceedings in cases like the present. The act then provides, that the justices shall enquire into the settlement of the head of the family and his or her children, in order, as it seems to me, to ascertain whether any of those children have been emancipated.

17 G. 2. c. 5. way to that part of *G. B.* called *Scotland* aforesaid, to which they are to be sent, and to deliver them to the constable or other officer of such first town in such next precinct, together with this pass, and the duplicate of the examination of the said *A. P.* taking his receipt for the same; and the said *A. P.* his wife and said children are to be thence conveyed on in like manner to the next adjoining shire, stewartry, or place, in that part of *G. B.* called *Scotland*, aforesaid, and are there to be delivered to some constable or other officer of the next parish, district, or place, within such next adjoining shire, stewartry, or place aforesaid, taking his receipt for the same: And such next officer in that part of *G. B.* called *Scotland* aforesaid, is hereby required to receive the said *A. P.* his wife and said children, and give such receipt as aforesaid, and to dispose of them according to law. Given under our hands and seals, this ——— day of ———, in the year of our Lord one thousand eight hundred and ——.

e.

(C.) Vagrant Pass to *Ireland.*

County of ——— to wit. } To the constable of ——— in the said county; and also to all constables and other officers whom it may concern, to receive and convey; and to all other officers of the peace, whom it may concern, to receive and obey.

WHEREAS *A. O.* was apprehended in the town of —— in the said county, as a rogue and vagabond, and is duly convicted before me, *J. P.* esquire, one of H. M.'s justices of the peace in and for the said county, [of being a rogue and vagabond] for that [*state the act of vagrancy*], and upon examination of the said *A. O.* taken before me the justice aforesaid, upon oath (which examination is hereunto annexed), it doth appear that the lawful settlement of him the said *A. O.* is in that part of the U. K. of *G. B.* and *Ireland* called *Ireland*; These are therefore to require you the said constable of ——— to convey the said *A. O.* to the town of ——— in the county of ———, that being the first town in the next precinct through which he ought to pass, in the direct way to that part of the said U. K. called *Ireland*, to which he is to be sent, and to deliver him to the constable or other officer of such first town in such next precinct, together with this pass, and the duplicate of the examination of the said *A. O.*, taking his receipt for the same. And the said *A. O.* is to be thence conveyed on in like manner until he shall arrive in the county of ———. And the constable or other officer to whom he shall be delivered in the said county of ——— is hereby required to apply to some justice of the peace in and for the said county of ———, for a warrant to the master of any ship or vessel bound for that part of the said U. K. called *Ireland*, that shall lie in the said county of ——— to take on board the said ship or vessel him the said *A. O.*, and convey him to such place in that part of the said U. K. called *Ireland*, as such ship or vessel shall be bound unto. And I do hereby certify that the said *A. O.* hath been actually publicly whipped [*or*, confined in the house of correction for the space of ———]. Given under my hand and seal the —— day of ——— in the year of our Lord ———.

D.

(D.) Vagrant Pass to *Ireland*, on Stat. 59 *Geo.* 3. *c.* 12. § 33.

To the constable of the parish of ——— in the county of ———, and also to all constables and other officers whom it may concern, to receive and convey; and to all other officers of the peace whom it may concern, to receive and obey.

County of ——— to wit. } WHEREAS complaint hath been made by the churchwardens and overseers of the poor of the parish of ——— in the said county of ——— unto us, whose names are hereunto set, and seals affixed, two of H. M.'s justices of the peace, acting in and for the said county (one being of the quorum) that *A. P.* a person born in *Ireland*, hath be-

It then enacts, that such justices shall and are thereby empowered to cause such poor person, *his wife*, and such of his children as have not gained a settlement in *England*, to be removed by a pass to *Scotland*. Now it is to be observed, that the wife is thus, for the first time, introduced in the latter part of this clause, which is perfectly silent in the prior part of it, as to any enquiry to be made by the justices respecting her settlement. I think, therefore, that the magistrates have no discretion given to them of removing the wife to her maiden settlement, and thereby of separating her and her family from the husband. If the magistrates remove at all, they must remove *the whole family* together to *Scotland*, under the provisions of this act of parliament. — *Holroyd* J. The words of this clause are *imperative* on the magistrates, in case they make any order, to remove the whole family to *Scotland*, and not, as they have done here, to remove the wife and R. v. Leeds.

come and is now actually chargeable to the said parish of ——— and whereas, upon examination of the said *A. P.* taken upon oath before us, (which examination is hereto annexed,) it doth appear, and we do adjudge, that the lawful place of settlement of the said *A. P.* is in that part of the U. K. called *Ireland*; and that he hath a wife named ——— and ——— children; *viz.* ——— neither of which children have gained any settlement in *England*. 17 G. 2. c. 5.

These are therefore to require you, the said constable of the parish of ——— aforesaid, to convey the said *A. P.*, his wife and said children to the town of *L.* in the county of *C.* that being the first town in the next precinct through which they ought to pass, in the direct way to that part of the said U. K. called *Ireland*, to which they are to be sent, and to deliver them to the constable or other officer of such first town in such next precinct, together with this pass, and the duplicate of the examination of the said *A. P.* taking his receipt for the same; and the said *A. P.* his wife and said children are to be thence conveyed on in like manner, until they shall arrive at ——— in the county of———. And the constable or other officer to whom they shall be delivered at ——— in the said county of ——— is hereby required to apply to some justice of the peace in and for the said county, for a warrant to the master of any ship or vessel bound for that part of the said U. K. called *Ireland*, which shall be in the same county, to take on board the said ship or vessel, the said *A. P.*, his wife and said children, and convey them to such place in that part of the said U. K. called *Ireland*, as such ship or vessel shall be bound unto. Given under our hands and seals, this ——— day of ———, in the year of our Lord one thousand eight hundred and ———.

(E.) Warrant to a Master of a Ship to convey a Vagrant to *Ireland*. E.

County of ——— to wit. } *J. P.* esquire, one of the justices of our lord the king, assigned to keep the peace within the said county: To *A. M.* master of the ship called the ——— of ———, now lying or being at ——— and bound for ——— in that part of the U. K. of *G. B.* and *Ireland* called *Ireland*, sendeth greeting.

THESE are, in the name of our said lord the king, to require you to take on board the said ship *A. O.* and *B. O.* vagrants, both of them being natives of that part of the U. K. of *G. B.* and *Ireland* called *Ireland* aforesaid, and having no settlement in *England*, and them to convey to ——— aforesaid in that part of the said U. K. called *Ireland*, or to such other place in *Ireland* aforesaid as you shall arrive at; and for the charges thereof you shall take, and *A. C.* constable of ——— at the time he shall serve you with this warrant, shall pay, and is hereby required to pay unto you, the sum of ——— in the whole; that is, at the rate of ——— by the head, for each of the said vagrants so to be delivered unto you, the same being the rate last appointed by the justices of our said lord the king, assigned to keep the peace within the said county of ———, at their general quarter sessions of the peace held in and for the said county of ———. And you are on the back of this warrant to sign a receipt for the money so paid, and also for the said vagrants so delivered unto you. Given under my hand and seal at ——— in the said county, the ——— day of ——— in the ——— year of our Lord one thousand eight hundred and ———.

R. v. Leeds.

family to the place of her maiden settlement. By the act, if the husband becomes chargeable by himself, or his family, he may be removed: and, it seems to me, that it is altogether immaterial, provided the head of the family be born in *Scotland*, whether the children be born in *England* or not. The only exception is as to those children who have gained settlements in *England* in their own right. Then, as a power is now given to remove the husband, the wife must be removed with him; for the power of removing her to her maiden settlement was allowed to exist only from the necessity of the case, and must cease with it. It seems to me, that we cannot narrow the construction of the words of this statute, unless, in so doing, we clearly saw that we should further the intention of the legislature. And as I do not think that their intention was to prevent the removal of the whole family together, I am of opinion that the decision of the sessions was right. — *Best* J. If the point decided in *Rex* v. *Eltham* were to occur again, I think it would perhaps be worth considering, whether that decision could be supported. It is, however, not necessary to determine that question now, because I am clearly of opinion, that, under the clause of this act of parliament, it is *imperative* on the magistrates to remove the whole family to *Scotland*. It seems to me, that clearer terms could not have been used; for the act expressly says, "that the magistrate shall, and they are hereby empowered, to remove such poor person, his wife, and such of his children as have not gained a settlement, to the place of his birth or last legal settlement." The statute could not, therefore, mean to leave a discretion in the magistrates, as to whether they should exercise this power or not. And by adopting this construction, we shall, as it seems to me, further the object of the statute, which was to remove the inconvenience which existed from idle and improvident persons coming to this country, and remaining here irremoveable with their wives and families. Any other construction would produce great inconvenience. It is quite clear that the head of the family may be removed, and if he should be removed after the separation from his family, the wife and children would, in all probability, remain permanently chargeable. — Order of sessions confirmed.

Where the unemancipated daughter of an *Irishman*, not having acquired any settlement of his own in *Englánd*, became pregnant, being unmarried, and as such was actually chargeable under 35 G. 3. c. 101. § 6.: Held, that this did not make her father and the rest of his family removable by a pass

Rex v. *The Inhab. of Whitehaven*, *E.* 3 *G.* 4. 5 *B. & A.* 720. 2 *Nol. P. L.* 251. Removal from *Workington* to *Whitehaven*, both in *Cumberland*. The sessions quashed the order, subject, &c. Case: — The pauper, *Mary M'Cormick*, an unmarried woman with child, and thereby chargeable, but who had not applied for or received parochial relief, was removed from *Whitehaven* to *Workington*, as the place of her birth settlement. The pauper, at the time of her removal, was above the age of 21, had gained no settlement for herself, was unemancipated, and living with her father and mother, as part of their family. The father and mother were both *Irish*, and had gained no settlement in *England*. The father had not applied for or received any relief from the removing township, for himself or any part of his family. The father was not examined by the removing magistrates. The question for the opinion of the Court was, whether under the provisions of stat. 59 *G.* 3. *c.* 12., and the above circumstances, the pauper was properly removed to the place of her birth settlement. — In support of the order of sessions, it was contended that the removal was improper; for

the whole family should have been removed by a pass to *Ireland* under stat. 59 *G.* 3. *c.* 12. § 33. That act provides, that if an *Irishman* not having gained a settlement in any part of *England*, shall become chargeable to any parish, by himself or his family, they shall be passed, under the provisions of that act, to *Ireland*. Now, here the pauper did become chargeable by his family: for his daughter being an unmarried woman, and pregnant, was, according to stat. 35 *G.* 3. *c.* 101. § 6., actually chargeable to the parish where she was residing. — *Per Cur.* We are of opinion that the chargeability contemplated by the legislature in stat. 59 *G.* 3. *c.* 12. § 33. was *the actual asking for parish relief*, and not the constructive chargeability created by 35 *G.* 3. *c.* 101. § 6. The order of sessions is wrong, and must be quashed. Order of sessions quashed.

R. v. Whitehaven.

to *Ireland* under 59 G. 3. c. 12. § 33.; but that the daughter might be removed by an order to the place of her birth in *England*.

(f) Of Soldiers, &c.

It may be proper to take notice, in this place, of stat. 3 *Geo.* 3. *c.* 8. concerning officers, soldiers, and sailors, who served in the late wars, which makes a provision with respect to such persons that had not been made by any former acts. Before this act they might have set up trades in any city, town, corporate, or other place, without being molested by reason of their exercising such trade: but for other reasons they might have been removed; as, if they did not bring a certificate, and were likely to become chargeable. But now by this act, such officers, mariners, soldiers, and marines, who have served since 29th *November* 1748, and not deserted (and by stat. 42 *Geo.* 3. *c.* 69. the same is further extended to those who have served since 16th *July* 1784, and by stats. 42 *Geo.* 3. *c.* 60. § 3. and 42 *Geo.* 3. *c.* 90. § 75. the same is extended to all militia-men, being married men, who have personally served in actual service for five years, and by stat. 56 *Geo.* 3. *c.* 67. (Vol. I. p. 183.) to such persons as aforesaid, who have been employed since 22d *June*, 1802, and also to fencibles who shall have served five years, and been honourably discharged: and also their wives and children may set up such trades as aforesaid, without any molestation by reason of the using of such trades, nor shall they, or their wives or children, *during the time they shall exercise such trades*, be removable to their place of settlement, until they shall become actually chargeable.

During the time they shall exercise such trades.] In the case of *Rex* v. *Gwenop*, *H.* 29 *Geo.* 3. 3 *T. R.* 133. 2 *Bott*, 541. 2 *Nol. P. L.* 194. it was determined, that working as a *husbandman* was not a trade within the meaning of the above act, and such persons were therefore removable.

However, stat. 35 *Geo.* 3. *c.* 101. seems to render these provisions nugatory, as far as removals are concerned, as that act provides that no person (excepting as therein excepted) shall be removable till actually chargeable.

2. Of the Order of Removal; and herein,

(*a*) *Of the place from and to which a removal may be.*
(*b*) *Of the complaint.*
(*c*) *Of the justices, their style and jurisdiction.*

(*d*) *Of the county.*
(*e*) *Of the description of the parties.*
(*f*) *Of the being chargeable.*
(*g*) *Of the examination.*
(*h*) *Of the adjudication.*
(*i*) *Of the suspending orders of removal.*

The form of the warrants or precepts aforesaid, where they are requisite, may be to this effect:

Warrant of one Justice for a Person to be examined concerning his Settlement.

County of —— To the constable of ——.

FORASMUCH as complaint hath been made before me —— one of his majesty's justices of the peace in and for the said county, by the churchwardens and overseers of the poor of the parish of —— in the county aforesaid, that A. P. *hath come to inhabit in the said parish, not having gained any settlement therein, and that the said* A. P. *is actually chargeable to the said parish of* —— [or is an unmarried woman, and with child, which child is likely to be born a bastard, and to be chargeable, as the case may be] *These are therefore to require you to bring the said* A. P. *before me, to be examined concerning the place of his last legal settlement. Herein fail you not. Given under my hand and seal, the —— day of ——.*

Warrant of two Justices in order to the Adjudication.

County of —— To ——.

FORASMUCH as complaint hath been made before us —— two of his majesty's justices of the peace in and for the said county, and one of us of the quorum, *by the churchwardens and overseers of the poor of the parish of —— in the said county, that* A. P. *hath come to inhabit in the said parish, not having gained any settlement therein, and that the said* A. P. *is actually chargeable* [or is an unmarried woman, and with child, which child is likely to be born a bastard, and to be chargeable] *to the said parish of ——: These are therefore to require you to bring the said* A. P. *before us, at the house of —— in —— in the said county, on —— the —— day of —— at the hour of —— in the forenoon of the same day, to be examined concerning the place of his last legal settlement, and to be further dealt withal according to law. Given under our hands and seals the —— day of ——.*

It may also not be unfitting, especially in cases of doubt, or difficulty, to give notice (if it may be) to the overseers of the parish or place where the settlement is supposed to be, that they may attend, if they think proper, when the adjudication is made; which probably might prevent appeals oftentimes from such adjudications and orders. Which notice may be to the effect following:

Summons to shew Cause against an Order of Removal.

County of —. { *TO the churchwardens and overseers of the poor of the parish of —— in the county of* –, *and to every of them.*

This is to summon you, or some of you, to appear (if you shall so think proper) before ———, and such other his majesty's justices of the peace for the said county of ——— as shall be at the house of ——— in ——— in the said county of ——— on ——— the ——— day of ——— at the hour of ——— in the forenoon of the same day, to shew cause why A. P. *should not be removed from the parish of ——— in the said county of ——— to your said parish of ———. Given under ——— hand and seal, this ——— day of ——— in the year of our Lord ———.*

Form of an order of removal.

And then the general form of an order of removal, as grounded upon the statute of the 13 & 14 *C.* 2. above recited, may be thus:

The Form of a general Order of Removal.

County of ———. { *TO the churchwardens and overseers of the poor of the parish of ———, in the said county of ———, and to the churchwardens and overseers of the poor of the parish of ——— in the county of ———, and to each and every of them.*

Upon the complaint of the churchwardens and overseers of the poor of the parish of ——— aforesaid, in the said county of ———, unto us whose names are hereunto set, and seals affixed, being two of his majesty's justices of the peace in and for the said county of ———, and one of us of the quorum, *that* John Thompson, Mary *his wife,* Thomas *their son, aged eight years, and* Agnes *their daughter, aged four years, have come to inhabit in the said parish of ———, not having gained a legal settlement there, and that the said* John Thompson, Mary *his wife, and* Thomas *and* Agnes *their children, are actually chargeable to the said parish of ———.* (a) *We the said justices, upon due proof made thereof, as well upon examination of the said* John Thompson *upon oath, as otherwise, and likewise upon due consideration had of the premises, do adjudge the same to be true; and we do likewise adjudge, that the lawful settlement of them the said* John Thompson, Mary *his wife, and* Thomas *and* Agnes *their children, is in the said parish of ———, in the county of ———: We do therefore require you the churchwardens and overseers of the said parish of ———, or some or one of you, to convey the said* John Thompson, Mary *his wife, and* Thomas *and* Agnes *their children, from and out of the said parish of ———, to the said parish of ———, and them to deliver to the churchwardens and overseers of the poor there, or to some or one of them, together with this our order, or a true copy thereof, at the same time shewing to them the original; and we do also hereby require you the said churchwardens and overseers of the poor of the said parish of ——— to receive*

(a) *Or that the said* A. P. (viz. the pauper) *hath been convicted of larceny, or other felony; or is a rogue, vagabond, &c.* [as the case may be.] *Or that the said* A. P. *is an unmarried woman, and is with child, and is actually chargeable to the said parish of ———, (according to the case of* Holm, East Waver Quarter, ante, p. 609.)

But *qu.* Whether it be not sufficient and the safest course to state generally that the pauper is "*actually chargeable?*" Ed.

and provide for them as inhabitants of your parish. Given under our hands and seals the —— day of —— in the —— year of the reign of his said majesty king George *the fourth.*

Orders to be executed by the officers of the removing parish.

To the Churchwardens and Overseers of the poor of the parish of Orton.] *St. George's* v. *St. Olave's, E.* 1 *Ann.* 2 *Salk.* 493. 2 *Bott*, 665. 2 *Nol. P. L.* 230. The order was to convey one *Thomas Gill* to the parish of *St. Olave*, and it was directed, To the churchwardens and overseers of the poor of the parish of *St. Olave*. Quashed; for they ought and can only order the parish officers where the intrusion is made, to make the removal.

Removals from extra parochial places, not having overseer.

The *Forest of Dean* v. *Linton*, 12 *W.* 3. 2 *Salk.* 487. *Fol.* 96. 97. 2 *Bott*, 630. If a place be extra-parochial, and hath no overseers, the justices cannot remove from thence, because there are none either to complain or to convey; but the justices ought first to appoint overseers and then to remove. (See p. 722.)

But it is no longer necessary that the pauper should be conveyed by the overseers.

54 G. 3. c. 170. Paupers ordered to be removed, may be conveyed by other persons than churchwardens or overseers.

By stat. 54 *Geo.* 3. *c.* 170. § 10. it is enacted, *That it shall and may be lawful for the churchwardens, overseers, or others having the controul, ordering, or management of the poor of any district, parish, township, or hamlet, to employ any proper person or persons whomsoever, to carry, remove, and deliver any pauper or paupers ordered to be removed by any of his majesty's justices of the peace, competent to make such order; and that a delivery by such person or persons of any pauper or paupers so ordered to be removed, shall be as good, valid, and effectual, to all purposes whatsoever as if the same was or were delivered by any churchwarden or overseer whatsoever.*

Although this statute does not, in express terms, require that the churchwardens and overseers of the poor, (when an order of removal is to be carried into execution, and they desire to employ any other person to carry, remove, and deliver the pauper or paupers,) shall give a written power to the person whom they appoint, and perhaps there is little danger of such a decision, yet the following form may be useful on those occasions:

Deputation of constable.

County of } To C. C. *constable* [*or whatever may be the situation of the person appointed*], of the parish of ——, *in* the said county.

WHEREAS by an order under the hands and seals of J. P. *and* K. P. *esquires, two of his majesty's justices of the peace in and for the said county, bearing date the —— day of —— instant, the following persons, viz.* ——, ——, *his wife,* ——, *their son, aged —— years, and* ——, *their daughter, aged —— years, are ordered to be removed from the parish of* ——, *in the county aforesaid, to the parish of* ——, *in the county of* ——, *as the place of their last legal settlement. Now we the undersigned churchwardens and overseers of the poor of the said parish of* ——, *do hereby depute you, the said* C. C. *to convey the persons so ordered to be removed as aforesaid, to the said parish of* ——, *and them to deliver to some one of the churchwardens or overseers of the poor there, together with the accompanying order of removal. Given under our hands at* —— *aforesaid, the*

——— *day of* ——, *in the year of our Lord one thousand eight hundred and* ——.

A. B. } *Churchwardens.*
C. D. }

E. F. } *Overseers of the Poor.*
G. H. }

(a.) Of the Place from and to which a Removal may be.

Bridewell v. *Clerkenwell, H.* 4 *W.* 3. 2 *Salk.* 486. 2 *Bott,* 629. As the justices cannot send from an extra-parochial place, unless they have overseers, so neither can they send to an extra-parochial place which hath no overseers, because there are none to receive them. Removal to or from extra-parochial places.

Rex v. *Tamworth, T.* 17 *Geo.* 3. *Cald.* 28. 2 *Bott,* 633. 2 *Nol. P. L.* 158. 167. 212. Two justices removed *Thomas Goff* and his wife and family, from the hamlet of *Bolehall* and *Glascote,* to the parish of *Tamworth,* adjudging their settlement to be at *Sirescote,* in the said parish of *Tamworth,* and ordering the overseers of *Tamworth* to receive and provide for them. — The sessions confirmed the order, and stated specially: That the pauper was legally settled at *Bolehall* and *Glascote,* and was afterwards hired for a year, and served that year at *Sirescote,* which is a hamlet consisting of one house only, and between three and four hundred acres of land; but had never contributed to the poor of the said parish of *Tamworth,* nor had ever been assessed thereto; but had been always assessed and paid to the support of the church of *Tamworth:* That no overseers had ever been appointed for the said hamlet of *Sirescote:* That the pauper and his family were delivered to the churchwardens of the said parish of *Tamworth.* — In support of these orders it was insisted that the circumstance of the hamlet never having contributed towards those burthens which the law threw upon the whole parish was perfectly immaterial, and that this place could never be considered as a vill within the meaning of stat. 13 & 14 *C.* 2. *c.* 12., there being here only one house, and no overseers; and that this was clearly a part of the parish of *Tamworth.* — On the other side it was contended, that this was a distinct vill, independent of the parish of *Tamworth,* and to which no pauper could be sent until it had officers duly appointed: That the justices had stated this to be a hamlet, and adjudged, that the pauper had therein gained a settlement: That overseers ought to have been first appointed for this place, and then the pauper removed there, and not to the parish at large. — By Ld. *Mansfield* C. J. There is no doubt at all: The place is averred to be within the parish where the hiring and service were had and performed, and it has no township or vill within the stat. of *Car.* 2., where officers are appointed, and therefore the justices could not remove the pauper there: here are no overseers, no separate economy: the adjudication is to *Sirescote,* as part of the parish of *Tamworth.* The other judges concurred. Both orders affirmed. See *Rex* v. *Saighton-on-the-Hill, ante,* p. 722. Removals to places which have no overseers.

Spitalfields v. *Bromley, E.* 11 *Ann.* 18 *Vin. Abr.* 468. 2 *Bott,* 684. 2 *Nol. P. L.* 145. 232. A person was sent to the Order of removal, though

To what places a removal may be.

to a wrong place, is conclusive if unappealed against.

parish of *Stepney*, who did not appeal. On removal of the order into the court of K. B., exception was taken, that the removal ought to have been to the township of *Spitalfields;* for *Stepney* is divided into four townships, and the poor have been removed from one township to another, in the same parish, and the statute takes notice of townships as well as parishes, and *Spitalfields* is a hamlet of *Stepney*. — *Per Cur.* If a person is removed to a wrong place, that place ought to appeal, and so *Stepney* ought to have done if it were a wrong place, or else the order will be conclusive upon them: but this is a matter here out of the record. Justices of the peace are not obliged to take notice of the divisions of parishes into townships and villages which maintain their own poor severally and distinctly; and *Stepney* here upon an appeal might have shewn that the person did belong to the township of *Spitalfields*, which might have been a reasonable cause to discharge the order. Two townships within a parish are the same as two parishes; yet churchwardens are overseers of the poor of the whole of the parish (though so divided), and have a superintendency over the whole villages and townships.

Churchwardens are overseers of a whole parish though it be divided into townships.

Rex v. *Kirkby Stephen*, *T.* 10 *Geo.* 3. *Burr. S. C.* 664. 2 *Bott*, 687. 2 *Nol. P. L.* 146. 232. The parish of *Kirkby Stephen* is a large parish, consisting of ten different townships, who maintain their respective poor, and have separate overseers. The townships of *Kirkby Stephen* and the township of *Wharton* are two of these ten townships. The pauper *William Greer* was removed from *Newport* by an original order directed to the officers of the *parish* of *Kirkby Stephen*, and adjudging his settlement to be in that *parish*, and removing him to that *parish;* and was brought, together with this order, by the overseers of *Newport*, and delivered to the overseers of the *township* of *Kirkby Stephen*. But neither the *parish* of *Kirkby Stephen* nor the *township* of *Kirkby Stephen* appealed from the order; and the pauper remained in *Kirkby Stephen*, and was maintained by a sister in the township of *Kirkby Stephen* for near a year and a half; when his sister dying, he asked relief of the township of *Kirkby Stephen;* who thereupon got him removed by an order of two justices to the township of *Wharton*. Which order was quashed upon appeal, subject to the opinion of the court of K. B. upon the above recited state of the case. — By Ld. *Mansfield* and the Court: The original order, made for the removal from *Newport* to the *parish* of *Kirkby Stephen*, must mean the *township* of *Kirkby Stephen*. The township was as a parish for this purpose, of a removal to it; the poor within the parish not being maintained by the whole parish, but by the particular townships to which they respectively belong. The township of *Kirkby Stephen* ought, in this case, to have appealed. They could not get rid of this order, but by appealing. And if they had appealed, the truth might have appeared. And when the facts had appeared to the justices, upon the whole truth being disclosed, the pauper might, in the end of the inquiry, have been sent to *Wharton*. — And the order of sessions was affirmed.

Removal to a village, a part of a parish, is void.

But in the case of *Rex* v. *Swalcliffe*, *H.* 23 *Geo.* 3. *Cald.* 248. 2 *Bott*, 690. 2 *Nol. P. L.* 145. 212. 213. It was determined, that the removal of a pauper to *Ascott*, a large populous village, part of the parish of *Whichford*, but maintaining its poor in common

with *Whichford,* was a mere nullity, and not conclusive, although unappealed from.

Rex v. *Topsham, T.* 46 *Geo.* 3. 7 *East,* 466. 2 *Nol. P. L.* 231. This was an order of removal from the parish of *Topsham,* in the county of *Devon,* to "*the parish of Poole, or town and county of Poole,*" and addressed to *the churchwardens and overseers of* "*the parish of Poole, or town and county of Poole.*" There was in fact, no such parish as the parish of *Poole,* but the town and county of *Poole* consisted but of one parish, and the name of that parish was *St. James's in Poole.* And it was objected at the sessions that the order was improperly directed to the parish of *Poole,* or town and county of *Poole,* when the proper name of the parish was *St. James's* in *Poole.* This objection the sessions over-ruled. And the Court of K. B. said, there was no objection to the description of *the parish of Poole,* omitting the mention of its tutelary *saint,* there being but one parish in the town and county of *Poole,* and *Poole* being the common name of the place. And that the parish officers of *Poole* had themselves considered this description sufficient to call upon them to appeal to the sessions against the order, by whom the objection to the misnomer had been over-ruled. Misdirection of order.

(*b*) Of the Complaint.

Upon the complaint.] *Rex* v. *Harely, H.* 12 *Geo.* 2. *Andr.* 361. 2 *Bott,* 641. 2 *Nol. P. L.* 206. 218. It was moved to quash an order of removal, because it did not set forth any complaint made: And by the Court, The objection is fatal, for the complaint is the foundation of the justices' jurisdiction. Complaint to be made,

Western Rivers v. *St. Peter's, E.* 1 *Ann.* 2 *Salk.* 492. 3 *Salk.* 254. 2 *Bott,* 639. 2 *Nol. P. L.* 206. 218. Exception to an order of removal, in that it was said to be upon complaint only, and not of the churchwardens or overseers. By the Court; This exception is fatal: for no one can disturb a man coming into a parish but they that have authority to do it: A complaint from one not concerned is nothing; it may be the parish is willing to keep him.

Upon the complaint of the churchwardens and overseers of the poor of the parish of Orton *aforesaid.*] *Spalding* v. *St. John Baptist, M.* 9 *Ann. Fol.* 267. 2 *Bott,* 639. 2 *Nol. P. L.* 218. The order was, "To the churchwardens and overseers of the poor of the parish of *Spalding,* and to the churchwardens and overseers of the poor of the parish of *St. John Baptist:* Whereas complaint hath been made by you ——." It was moved to quash the same for the uncertainty, because it did not say, by which: But by *Parker* C. J. Sure that is well enough; for it is upon complaint of the right, if both complain. by the churchwardens or overseers.

(*c*) Of the Justices, their Style and Jurisdiction.

Unto us whose names are hereunto set and seals affixed, being two of his majesty's justices of the peace.] *Walton* v. *Chesterfield, M.* 8 *W.* 5 *Mod.* 322. 2 *Bott,* 629. 2 *Nol. P. L.* 215. An order was quashed, because it did not appear that it was made by two justices: It was only, "Whereas complaint hath been made unto us:" without reciting their authority as justices. The justices' authority must appear.

The complaint may be to one justice, but two ought to be together at the adjudication and hearing.

Two of his majesty's justices of the peace in and for the said county.] *Rex* v. *Westwood*, *H.* 4 *Geo.* 1. *Sett. & Rem.* 107. 1 *Stra.* 73. 2 *Bott*, 631. 2 *Nol. P. L.* 206. On complaint to one justice, two justices adjudge and remove; and it was held to be well: Otherwise, where one justice sets his hand to the order in the absence of the other.

Also at the examination.

Rex v. *Wykes*, *T.* 11 *Geo.* 2. 2 *Stra.* 1092. 2 *Bott*, 642. 643. 2 *Nol. P. L.* 208. It was held, that though the complaint may be to one justice, yet the examination ought to be by two, and those the same who sign the order of removal.

And, most undoubtedly, the justices ought to be both together at the hearing and determining: though the practice in many places is otherwise.

But in the case of *Rex* v. *Stotfold*, *E.* 32 *Geo.* 3. 4 *T. R.* 596. 2 *Bott*, 634. 2 *Nol. P. L.* 144. 211. It was determined, that an order of removal, signed by two justices separately, is not absolutely *void*, but only *voidable*, if appealed against in a regular way.

Whether it be necessary, that the two justices shall be together at the time depends upon the circumstance whether the act to be done be judicial, or merely ministerial. *Rex* v. *Hamstall Ridware*, *T.* 29 *Geo.* 3. 2 *Bott*, 375. 1 *Nol. P. L.* 456. 3*d edit.* (See Vol. I. p. 147.)

To be justices of the peace.

Q. v. *Uplin*, *M.* 12 *Ann.* *Sett. & Rem.* 27. The order was quashed, because it did not say that they were justices of the peace, but only justices of the county.

And to be *for* the county, &c.

Rex v. *Owlton*, *M.* 13 *Geo.* 1. 2 *Sess. Ca.* 76. 2 *Salk.* 474. 2 *Bott*, 637. 2 *Nol. P. L.* 217. Exception was taken to an order for saying — "Unto us, two of his majesty's justices of the peace *in* the county aforesaid;" for that by this it appears only that they lived in the county, and not that they were justices *for* that county: And the Court held this to be a fatal exception, and quashed the order for that cause.

Rex v. *Andover*, *T.* 23 *Geo.* 3. *Cald.* 373. 2 *Bott*, 638. 2 *Nol. P. L.* 217. Exception was taken to an order of removal, That the magistrates stated themselves to be "two of his majesty's justices of the peace for the borough *or* town and parish of *Andover*," &c. Which order was quashed at the sessions *for irregularity upon the face of it.*—In support of the order of sessions it was contended, that the form in which the order of removal was drawn, was equivocal and uncertain; that if "*and*" had been substituted for "*or*," an intelligible meaning had been conveyed; but that as it stands, they may be justices for the town and not for the borough, or for the borough and not for the town; but certainly not for both, nor does it appear for which.—*Buller* J. Whether for one or the other, enough appears to support the order; for both town and borough are coupled with parish. And they sufficiently appear to be justices of either of those places, for which they were empowered to make this order.—Lord *Mansfield* C. J. and *Willes* J. concurring, (*Ashhurst* J. absent) order of sessions quashed, and the original order affirmed.

It need not appear that they are justices of the division.

Anon. *M.* 8 *W.* 2 *Salk.* 473. 2 *Bott*, 636. 2 *Nol. P. L.* 217. It was objected to an order, that it did not appear thereby that the justices were of the *division*, which is required by the statute: But this objection was over-ruled, for that the statute therein is only directory.

So also in *Rex* v. *Moor Critchell, M.* 42 *Geo.* 3. 2 *East,* 66. 2 *Bott,* 635. 2 *Nol. P. L.* 216. The order was as follows: "*Wilts* to wit. To the churchwardens and overseers of the poor of the parish of *Donhead St. Mary, in the county of Wilts,* aforesaid, to remove and convey, and to the churchwardens and overseers of the poor of the parish of *Moor Critchell, in the county of Dorset,* to receive; these: — Whereas, complaint hath been made by you, the churchwardens, &c. of *Donhead St. Mary,* in the county of *Wilts,* aforesaid, unto us whose hands and seals are hereunto subscribed and set, *being two of his majesty's justices of the peace in and for the* said *county,* &c. The order was removed by *certiorari,* and it was contended that it was bad for a default of jurisdiction in the magistrates making the order apparent upon the face of it, in not stating them to be justices of the peace of the county of *Wilts.* And the Court held the objection to be fatal.

Before what justices.

One county mentioned in margin and two in body of order.

See also *Rex* v. *Stepney* (*post,* p. 758.)

Rex v. *Saint Mary's Leicester, H.* 58 *Geo.* 3. 1 *B. & A.* 327. 2 *Nol. P. L.* 216. Removal from the parish of *Wing* in the county of *Rutland,* to the parish of *St. Mary's* in the borough of *Leicester.* The sessions, on appeal, confirmed the order. But both orders being removed by *certiorari* into the Court of K. B. a rule was obtained calling on the parish officers of *Wing* to shew cause why they should not be quashed for a default of jurisdiction in the magistrates' making the original order apparent upon the face of it, in not stating them to be justices of the peace of the county of *Rutland.* The order was in this form: "County of *Rutland.* To the churchwardens and overseers of the poor of the parish of *Wing* in the said county, and to the churchwardens and overseers of the poor of the parish of *St. Mary's* in the borough of *Leicester* in the county of *Leicester,* and to each and every of them. — *Rutland* to wit. — Upon the complaint of the churchwardens and overseers of the poor of the parish of *Wing* in the said county, made unto us whose names are hereunto set, and seals affixed, being two of his majesty's justices of the peace in and for the said county, and one of us of the quorum, that *Mary Bacon,* &c. are come to inhabit, &c. (*pursuing the usual form of such orders*)." — After argument, Lord *Ellenborough* C. J. said, If this Court is put under the painful *necessity* of over-ruling the case of the *King* v. *Moor Critchell* (*ante* p. 755,) in order to do justice in this case, I have no hesitation in so doing. The words "justices of the peace in and for the said county," in that case immediately follow the words "the county of *Wilts* aforesaid," and in plain grammatical construction can have reference to the county of *Wilts* only. For the word *said* must have reference to the last antecedent, and I wish that the very able and learned Judge who decided that case, instead of lamenting that such an objection had there been taken, had applied his powerful mind to the objection itself; and I have no doubt that it would have vanished before that mind exerting its proper vigour on the subject. Here there is first, "*County of Rutland,*" in the margin, then come the words "parish of *Wing* in the said county;" that must mean the county of *Rutland,* if we are to give the word *said* any meaning at all. Then immediately follow the words "justices of the peace for the said county;" that must, therefore, also have a reference to the county of *Rutland.* The grammatical construction and plain meaning of the instrument,

An order of magistrates was directed to the parish of *W.* in the county of *Rutland,* and also to the parish of *M.* in the county of *Leicester,* and the words "county of *Rutland,*" were then written in the margin, and the magistrates were in a subsequent part of the order described as justices of the peace *for the county aforesaid:* Held, that it thereby sufficiently appeared that they were justices for the county of *Rutland.*

direct us to that conclusion alone.—*Bayley* J. It is impossible to doubt in this case to what county the magistrates who made this order belonged. The *King* v. *Moor Critchell* is undoubtedly a very strong authority, and perhaps not distinguishable from this case; but that case does not convince me. I think the Court ought there to have come to a contrary conclusion. In that case, the words "said county" could only mean, in grammatical construction and common sense, the county of *Wilts*. Now here "*said* county" must mean *Rutland*, and not *Leicester*. Besides, in this case, after the direction of the order, there are found in the margin, the words "county of *Rutland*, to wit," which make the case much stronger. Then if there be no doubt to which county the word *said* refers, the objection cannot prevail.—*Abbott* J. The case of the *King* v. *Moor Critchell* was a decision, not establishing any general rule of law, but turning upon the construction of the terms of that particular instrument, and has not I believe been since recognised or acted upon. Even if this case were precisely similar to that, I should say that the Court there had not adopted the true construction, nor that which was warranted by the ordinary rules of criticism or language. Here, however, there is a distinction; the county here is named for the second time in the margin, and we may therefore begin to read the instrument from that part; if so, there will be no doubt; for the county of *Rutland* is the only county named to which the word *said* can have any reference. *Holroyd* J. concurred. Order affirmed.

One of the *quorum*.

And one of us of the quorum.] An abundance of orders formerly have been quashed, for not setting forth, that one of the justices was of the *quorum;* but now by stat. 26 *Geo.* 2. *c.* 27. no order shall be set aside for that defect only.

But if in fact neither of the justices shall be of the *quorum*, it seemeth nevertheless (except in the cases hereafter mentioned, by stats. 7 *Geo.* 3. *c.* 21. 4 *Geo.* 4. *c.* 27) that such order shall not be good; for although the statute doth not require that the order shall set forth one of the justices to be of the *quorum*, yet it doth require that one of them shall actually be so. And there are many towns corporate whose charters have no *quorum*, but only constitute certain of the chief officers justices to keep the peace, without giving them power to hear and determine felonies, trespasses, and other misdemeanors. That is to say, they have the power which the justices of the county at large have by the first assignment in the commission of the peace, which is the same that the conservators of the peace had by the common law, and is all that the justices of the peace had at first by their commission. The power of hearing and determining, which they have now by the second assignment in the commission, and which only implies a *quorum*, is a separate and distinct authority, and was superadded to the former some years after the institution of the office of the justices of the peace; and this power the justices in divers towns corporate have not, and consequently can have no *quorum*. See tit. Justices, Vol. III.

The sessions may examine into the jurisdiction of the removing justices.

Albrighton v. *Skipton*, *E.* 6 *Geo.* 1. 1 *Stra.* 300. 2 *Bott*, 637. Upon an appeal from an order of removal made by two justices, one of the *quorum:* the sessions, reciting that they had perused the Charter of *Albrighton*, and it not appearing thereby that the two justices were either of them of the *quorum*, there-

fore they quashed the order of removal. But by the Court: The order of sessions must be quashed; not for want of any power in the sessions to look into the jurisdiction of the two justices, for that they certainly have; but because that want of jurisdiction is not sufficiently alleged; since they might have a jurisdiction, though it did not appear upon the Charter of *Albrighton.* The sessions should have said in general, that it appeared to them, that the two justices were neither of them of the *quorum*, and that would have been good cause to quash the order of the two justices.

But now by stat. 7 *Geo.* 3. *c.* 21. This is in part remedied: For if in any city, borough, town corporate, franchise, or liberty, they have *one* (and no more than one) justice actually of the *quorum*; all acts, orders, adjudications, warrants, indentures apprenticeship or other instruments done or executed by two or more justices qualified to act within such city or other place, shall be valid, although neither of the justices shall be of the *quorum*. 7 G. 3. c. 21. Cities and franchises having *one* justice only of the quorum.

And again by stat. 4 *Geo.* 4. *c.* 27. reciting stat. 7 *Geo.* 3. *c.* 21. and that it is expedient that its provisions "should be extended to such cities and other jurisdictions as have two or any other limited number of justices of the quorum qualified to act within the same" it is enacted that from the passing of this act (*viz.* 23d *May*, 1823,) in all cases where the number of justices of the peace for any city, borough, town corporate, franchise, liberty, or other local jurisdiction is limited, and any one, two, or more of such justices only are of the quorum, all acts, orders, adjudications, warrants, indentures of apprenticeship, or other instruments, which shall be made, done, or executed either in or out of the general quarter sessions, or petty sessions, or any adjournment thereof, by virtue of any charter or grant, or by virtue of any act of parliament made or to be made, by any two or more justices of the peace acting within the same, though neither of the said justices of the quorum, shall be valid in law, to all intents and purposes as if the said justices had been of the quorum: any grant, charter, law, or custom to the contrary thereof in anywise notwithstanding. 4 G. 4. c. 27. Cities &c. having *two or more* justices of the quorum.

(*d*) Of the County.

The county in the margin is not sufficient, but it must appear in the body of the order that the place is in such county, either expressly, or by some words of reference, as *in the said county*, or *in the county aforesaid*. *Sett. & Rem.* 151. 2 *Sess. Ca.* 181.

Rex v. *St. Stephenson, T.* 2 *Geo.* 2. 1 *Barnard.* 177. 196. There was an order of removal by the justices of the town of *Bedford*, from the parish of *St. Peter's* in *Bedford*, to the parish of *St. Stephenson*, in the county of *Bedford*, and it was only said in the margin *the town of Bedford*, without mentioning in what county. It was moved to quash this order; and insisted, that it was necessary to mention what county this *Bedford* lay in, because the appeal must be to the justices of that county where it lies. And the Court was of this opinion, but did not quash the order, by reason of a flaw in the *certiorari* by which it was removed.

R. v. St. Stephenson.

Rex v. *Holbeck in Leeds, M.* 16 *Geo.* 2. *Burr. S. C.* 198. 2 *Bott,* 666. 2 *Nol. P. L.* 217. *The Borough of Leeds* was in the margin, and the direction was, to the churchwardens and overseers of the poor of the township of *Holbeck* in the said *borough*. And by the Court, that is well enough. And the distinction is, betwixt orders and indictments. In orders, the margin is to be considered as part of the order, and a clear plain reference to the county in the margin is sufficient; but in indictments, the county must be expressed in the body, and a reference to the county in the margin is not sufficient.

Where two counties are mentioned before, *the county aforesaid* is bad for uncertainty. As in *Rex* v. *Stepney, E.* 8 *Geo.* 2. *Burr. S. C.* 23. 2 *Bott,* 688. 2 *Nol. P. L.* 215. The order was directed to the churchwardens and overseers of the poor of two parishes in two different counties, and the justices call themselves justices of the peace for *the county aforesaid*. And the order was quashed, because it did not appear for which county they were justices. And the Court can intend nothing. For those who act under a jurisdiction given by act of parliament must shew their jurisdiction,

See the preceding division, (c)

(e) Of the Description of the Paupers.

Pauper to be named if known,

or if unknown, state him to be so.

That John Thompson, Mary *his wife,* Thomas *their son.*] *Southwell* v. *Needwell, M.* 11 *Ann. Sett. & Rem.* 57. 2 *Bott,* 667. 2 *Nol. P. L.* 223. "Whereas a certain woman hath intruded, these are therefore to require you to convey": Objection, it is not said who this woman was. And by *Parker* C. J. You must either name her, or say, a certain woman unknown.

State all the parties complained of.

Reg. v. *Newington, T.* 10 *Ann. Sett. & Rem.* 45. 2 *Bott,* 640. 2 *Nol. P. L.* 220. Whereas such a person hath intruded into the parish, and is likely to become chargeable; these are therefore to require you to remove him *with three children.* Quashed as to the children, for they have removed more than is complained of.

Children to be described by their name and age.

Johnson's case, *H.* 10 *W.* 2 *Salk.* 485. 2 *Bott,* 658. 2 *Nol. P. L.* 223. Order to remove a man and *his family,* not good; because too general; for some of the family might not be removeable.

Beaston v. *Scisson, M.* 5 *Geo.* 1. 1 *Stra.* 114. 2 *Nol. P. L.* 223. Order for removal of *Thomas Block* and his family: Upon the first reading quashed as to the family, because too general.

Flixton v. *Royston, T.* 9 *Ann.* 1 *Sess. Ca.* 11. *Fol.* 278. 2 *Nol. P. L.* 223. Order to remove *Jane Smith* and her five children: Quashed as to the children, for the uncertainty; because it neither tells the names nor ages of the children; for she might have more children than five, and some of those five might have gained settlements.

Ringmore v. *Petworth, T.* 10 *Ann. Sett. & Rem.* 41. 2 *Nol. P. L.* 224. The order was, whereas such a person and his three children are likely to become chargeable, and their last legal settlement was at *Ringmore*. It was moved to quash the same because the children's ages were not set forth. But by the Court; It is not necessary in this case; for the order says, they

were last legally settled in *Ringmore,* and then no matter what their ages are. Ringmore v. Petworth.

Hobey v. *Kingsbury, T.* 8 *Geo.* 1. 1 *Stra.* 527. 2 *Bott,* 662. 2 *Nol. P. L.* 220. 223. Two justices adjudging the settlement of the husband to be at *Kingsbury,* and that he is likely to become chargeable to *Hobey,* send him, his wife, and son of one year old, to *Kingsbury:* and whether this was good as to the wife and child, was the question: And it was held to be well enough; and the order was confirmed.

Reg. v. *Middleham, M.* 9 *Ann. Fol.* 271. 2 *Bott,* 660. 2 *Nol. P. L.* 224. 228. Order to remove a child, of the age of ten years, to *Middleham,* because *Middleham* was the place where his father was last legally settled. Quashed by the Court; because there was no adjudication that *Middleham* was the place of the child's last legal settlement, and at that age it might have gained a settlement. Adjudication as to place of settlement.

Rex v. *Trinity in Chester, H.* 11 *Geo.* 1. 2 *Sess. Ca.* 74. 2 *Bott,* 667. 2 *Nol. P. L.* 224. This rule was laid down: Every order that concerns the removal of a father and his children ought to shew the ages of the children; for they may have gained a settlement in some other right, as by being apprentices or servants; therefore their age ought to be set forth, that it may appear to the Court, that by reason of their infancy they have not gained any settlement in their own right, but have only a relative settlement from their father. Seven years is an age that the Court will presume a child could gain a settlement at, in his own right: but if it appears upon the order that the child was above seven years old, the order must set forth that such child hath not gained a settlement in his own right. Ages of children must be stated in the order.

So in *Rex* v. *Bowling, H.* 15 *Geo.* 2. *Burr. S. C.* 177. 2 *Nol. P. L.* 224. The order removed the father and children (without setting forth their ages) from *Bradford* to *Bowling,* and adjudged *Bowling* to be the place of the father's last legal settlement. By the Court: The established rule is, that where the children are sent in consequence of their father's settlement, either the ages of the children must be set out (to shew that they are of such tender years as not to have gained a settlement for themselves); or there must be an express adjudication of their having gained no other settlement. Adjudication that children have gained no other settlement.

Have come to inhabit.] *Q.* v. *Graffham, E.* 12 *Ann. Sett. & Rem.* 16. 2 *Bott,* 640. 2 *Nol. P. L.* 219. The order sets forth, that *Henry Tate* and his wife do *endeavour* to intrude into the parish. And quashed by the Court; for that he cannot be removed out of the parish, unless he hath come into it. Must have come to inhabit.

Vide per Ld. *Ellenborough* C. J. in *Rex* v. *St. James* in *Bury St. Edmunds, ante,* p. 738.

Not having gained a legal settlement there.] *Weston Rivers* v. *St. Peter's, E.* 1 *Ann.* 2 *Salk.* 492. 3 *Salk.* 255. 2 *Bott,* 639. Exception to an order of removal, that it was not said, that the pauper did not rent a tenement of 10*l.* a-year, according to the words of the act. But as to this the order was held good. And not gained a settlement;

(f) Of the being actually chargeable.

Chargeable to the parish removed from.

Who shall be said to be chargeable has been before shewn.

And that the said J., M. *his wife, &c. are actually chargeable to the said parish of* Orton.] *Rex* v. *Bradford, T.* 10 *Ann. Sett. & Rem.* 40. 2 *Nol. P. L.* 226.—*Likely to become chargeable* (a), but not said to what parish: Quashed.

But in *Rex* v. *Witham super Montem; H.* 5 *Geo.* 1. 1 *Stra.* 142. 2 *Nol. P. L.* 226. By the Court: *It appearing to us that he is likely to become chargeable,* is sufficient, without saying *to the parish from* whence removed; for it is not to give a jurisdiction, but only the reason of the judgment.

And, *Maidstone* v. *Dething, M.* 7 *Geo.* 1. 1 *Stra.* 393. 2 *Nol. P. L.* 226. It was held well enough in an order of removal, to shew a complaint that the party is come into the parish of *Dething,* and is likely to become chargeable, without saying farther *to the said parish of* Dething.

And *Rex* v. *Leofield, E.* 12 *Geo.* 1. 2 *Stra.* 698. 2 *Nol. P. L.* 226. An order of removal, whereby a person was adjudged likely to become chargeable, without saying *to the parish from whence removed,* was confirmed.

These are indeed but scraps of cases, minuted down by gentlemen for their own private use, and therefore perhaps not certainly to be relied on. And in the case of *St. Nicholas, Gloucester,* v. *St. Peters, Bristol, H.* 11 *Geo.* 1. 2 *Sess. Ca.* 73. Upon an order of removal of *Mary White,* the reciting part of it was, "Whereas the pauper was likely to become chargeable to the parish of *St. Nicholas;*" but in the adjudicating part it was only said, that she was likely to become chargeable, without saying to the parish of *St. Nicholas.* The Court allowed this to be a good exception, and said they would not take these orders to be good by intendment; for the Court will not intend a jurisdiction in the justices, where they do not entitle themselves to it on the face of the order.

And in *Rex* v. *Bourn, E.* 8 *Geo.* 2. *Burr. S. C.* 39. 2 *Nol. P. L.* 217. The complaint was, that the pauper was likely to become chargeable to the parish of *Spalding;* and the adjudication was, that the pauper was likely to become chargeable, generally, without saying *to the said parish of* Spalding. And by Ld. *Hardwicke* C. J. There must be either an express adjudication, or a plain reference to the complaint; because it is the very point upon which the jurisdiction of the two justices is founded. Here the complaint is right; but the adjudication is at large, there being no words of reference. It is only that the pauper is likely to become chargeable. Now this may be to his relations or parents, as well as to the parish. And he cited the above case of *St. Nicholas's* v. *St. Peter's* as similar to the present: and said, that the case of *Rex* v. *Witham,* (*supra,*) was not finally determined by the Court, but was referred to the judge of assize. And he added, that there was no case that he could meet with, upon the strictest inquiry, where an adjudication at

(a) These were the words used before stat. 35 G. 3. c. 101.

large, without some words of reference to the complaint, was holden to be good. R. v. Bourn.

So in the case of *Rex* v. *Ufculm*, *M.* 13 *Geo.* 2. *Burr. S. C.* 138. 2 *Bott*, 668. 2 *Nol. P. L.* 224. It was objected, that the paupers were said to be likely to become chargeable, but did not say to what parish. The words were " and whereas upon due examination and inquiry, it appears to us, and we do accordingly adjudge that they are likely to become chargeable." By *Lee* C. J. and the Court: The objection is fatal. A complaint must appear of the pauper's being likely to become chargeable to the parish from whence removed; and there must be an adjudication of the truth of it. For the justices have no authority without such complaint and adjudication. We cannot support an order by implication. There is no necessity indeed for any particular form of words. But there must be an adjudication of it in some words or other.

And in the same term, in *Rex* v. *Netherton, Burr. S. C.* 139., an order was given up as indefensible, on the like objection.

(*g*) Of the Examination. (*a*)

What shall be deemed due proof.

Upon due proof made thereof.] *Munger-Hunger* v. *Warden, H.* 10 *Geo.* 1. 2 *Sess. Ca.* 40. 2 *Bott*, 642. 2 *Nol. P. L.* 222, 223. Exception was taken to an order, for that it was said to be made upon *due examination*, without saying *upon oath*. But by the Court: This is sufficient; for if it is said to be made upon due examination, it shall be understood to be upon oath.

Rex v. *Fisherton Delamore, H.* 13 *Geo.* 2. *Sess. Ca.* 45. *Upon due consideration* was held to be sufficient; for that *due consideration* implies a *due examination*.

(*a*) *Form of the Examination of a Pauper where the Settlement is by Birth.*

County of ——— } The Examination of *A. B.* at present residing in the parish
to wit. } of — ——— in the said county, labourer, touching the place of his last legal settlement, taken upon oath before us, two of his majesty's justices of the peace in and for the said county, the — day of ——, 18—.

Who upon his oath saith, That he is about — years of age, and was born, as he hath been informed, and verily believes, in the parish of ———, in the county of ———, where his father and mother were settled inhabitants, and that his father gained a setttlement in the parish of - by renting and occupying a dwelling house of one *C. D.* in the said parish of of the yearly rent of 20*l.* [*or as the case may be.*] And this examinant saith, that he hath never, to the best of his knowledge and belief, done any act whereby to gain a settlement in his own right; And that on or about the — day of —— 18—, he was lawfully married to *Sarah* his present wife, in the parish church of ———, in the county of ———, by whom he hath three children, namely, *Sarah*, aged — years, *Mary*, aged — years, and *William*, aged — months or thereabouts; and that they are now actually chargeable to the said parish of———. *A. B.*

Taken and sworn before us, the day
and year first above written. *J. P.*
W. P.

The like by Hiring and Service.

County of ——— } The Examination of *C. D.* at present residing in the parish
to wit. } of ——— in the said county, labourer, touching the place of his last legal settlement, taken upon oath before us, two of his majesty's justices of the peace in and for the said county, the — day of —— 18—.

Who upon his oath saith, That about three years ago he hired himself to one

One justice may order a pauper to be brought to be examined; but two must be present at the examination.

Upon the examination.] *Ware* v. *Stanstead Mount Fitchet*, *T.* 12 *W.* 3. 2 *Salk.* 488. 2 *Bott*, 642. 2 *Nol. P. L.* 208. 222. Exception to an order, for that it was said, it appears upon examination *before us, or one of us.* — By the Court: The examination ought to be before both, because both are to make the judgment of removal. And *Gould* J. said, the statute directed, and the practice was, to make *complaint* to one justice, and he grants his warrant to bring the pauper before two justices, and then they two examine and remove. See stat. 49 *Geo.* 3. *c.* 124. § 4. *post*, 768.

And in the case of *Rex* v. *Wykes*, *T.* 11 *Geo.* 2. 2 *Stra.* 1092. 2 *Bott*, 642. 2 *Nol. P. L.* 208. It was held, that the complaint may be to one justice, but the examination ought to be by two.

Examination taken, and order signed by two justices separately, is not *void* but only *voidable*, if appealed against in due time.

Rex v. *Stotfold*, *E.* 32 *Geo.* 3. 4 *T. R.* 596. 2 *Bott*, 634. 2 *Nol P. L.* 144. 211. On an appeal against an order, by which *M. Shaw* and his family were removed from *Stotfold* to *Chilvers;* the order was quashed, subject to the opinion of the Court on the following Case: The pauper was born at *Stotfold*, but his father's settlement was at *Chilvers Coton*, and the pauper had never gained any settlement in his own right, except as follows: He and his family were, in 1776, removed from *Sandom* to *Stotfold* in the usual form, and were delivered to the parish officers of *Stotfold*, who received them, and did not appeal. The pauper and his family have ever since till the present removal occasionally resided in and been relieved by *Stotfold*. It was then proved by the respondents (but which evidence was objected to by the appellants, but over-ruled by the Court), that the order of removal from *Sandon* to *Stotfold*, and the examination on which it was founded, were in fact taken and signed by the two justices *separately, and not in the presence of each other*, and that one of them, though a magistrate for the county of *Hertford*, took the examination, and signed the order at his own house situate in that part of *Royston* which lies in *Cambridgeshire; Royston* lying partly in each county. — The *Court* took time to consider. — Ld. *Kenyon* C. J. said, That he was not then prepared to state from his papers the reasons at length upon which their judgment was founded, but that he had thoroughly and attentively considered the question; and that the result of his deliberations and of the rest of the Court was, that the former order was only *voidable* not absolutely *void;* and therefore that it was necessary for the parish who wished to avoid it, to have appealed against it in a regular course of proceedings. That it would be extremely inconvenient to permit a parish to set aside an order of removal at

E. F., of the parish of ——, in the county of ——, farmer, to serve him in husbandry for one year, at the wages of ——, and that he served his said master under that hiring one whole year, in the said parish of ——, [viz. from the first day of *January* 1810, to the first day of *January* 18—,] and received a full year's wages; since which time he, this examinant, hath not, to the best of his knowledge and belief, done any act whereby to gain a subsequent settlement; and that about two years ago he was lawfully married to *Mary*, his present wife, in the parish church of ——, in the county of ——, by whom he has one child, namely, *George*, aged twelve months; and that they are now actually chargeable to the said parish of ——. *C. D.*

Taken and sworn before us, the day and year first above written. *J. C.* *S. P.*

any distance of time, which had been acquiesced under for years without any dispute; and that a distinction had always prevailed between void and voidable instruments; a strong instance of which was that on the construction of the stat. *Westminster* 2. *c.* 1., which, though it enacts, that all fines contrary to that act shall be *ipso jure* null, has been held to mean only *voidable* by some legal proceeding. Order of sessions, quashing the original order, confirmed. R. v. Stotfold.

To be examined by the same justices who remove.

In the above case of *Rex* v. *Wykes, Andr.* 238. 2 *Bott*, 642, 643., one justice took the examination, and other two justices removed upon that sole examination, and in the order set forth that the party was examined *before themselves;* for which, and for not summoning the party before them, an information was granted against the two justices.

Removal by two justices of one county on examination taken by justices of another.

Rex v. *Coln St. Aldwin's, M.* 13 *Geo.* 2. *Burr. S. C.* 136. 2 *Bott*, 643. 2 *Nol. P. L.* 208. The order of removal appeared to be wholly grounded upon an examination taken by two justices of another county; and was therefore quashed. *Per Cur.* They ought to have examined into the matter themselves; and in the presence of both together, and not separately. And though they were not bound to set forth the grounds of their adjudication, yet when they do set them forth, the Court are to judge of them. And in this case, the examination which was relied upon being taken by two justices of another county, and the person examined by those justices remaining still alive for aught that appears to the contrary; it is plain this deposition ought not to have been received as evidence to ground their adjudication upon; though it might perhaps have been used as a concurring evidence. And Ld. C. J. *Lee* said, he had often heard it declared, that both justices ought to be together at the *viva voce* "examination of the witnesses." And Mr. J. *Page* said, he remembered a case, wherein it was determined, that both justices must be present, and that it is not sufficient for one justice to examine the matter and transmit it to the other, and that other to sign the order without examining into the matter himself.

The pauper having become insane, Query, Whether either his *examination*, previously taken by justices of the same county, or *hearsay testimony* of his former declarations, be admissible in evidence?

Vide Phill. Ev. See 5th edit.

Rex v. *Eriswell, T.* 30 *Geo.* 3. 3 *T. R.* 707. 2 *Bott*, 649. 2 *Nol. P. L.* 207. Two justices removed *John Sharp* from *Icklingham All Saints* to *Eriswell*, both in *Suffolk*. The sessions on appeal confirmed the order, subject to the opinion of the Court on the following Case: The pauper came into the parish of *Icklingham All Saints* in 1767, where he was employed as a day-labourer to work on the navigation. In 1779, he was taken before two justices for the said county, by the overseers of *Icklingham*, to be examined as to the place of his settlement; in consequence of which his examination was taken upon oath before those two justices, and signed by the pauper; by which examination it appeared, that he had gained a settlement by hiring and service for a year in *Eriswell*, and had done no act to gain a settlement elsewhere. No proceedings were had in consequence of this examination, until this order of removal was applied for and made. [*N. B.* The two justices who made the order of removal were *not the same* two justices who took the examination.] The pauper, from the time of the examination being taken, continued to reside at *Icklingham* for about five years, without being chargeable to that parish, when he became insane, and continued so to

Examination of the pauper.

R. v. Eriswell.

the time of his removal to *Eriswell* as aforesaid, and also at the time of hearing the appeal. On the part of the respondents, this examination was offered in evidence, and objected to on the part of the appellants, but was received by the Court, the handwriting of the justices who took the same being first proved: and upon that, and other evidence, the sessions confirmed the order, but they also stated, that in their opinion the evidence produced, exclusive of the said examination, was not sufficient to warrant that determination. After hearing argument on both sides, the Court were divided in opinion, and the judges gave their opinions at great length. — *Ashhurst* and *Buller* Js. were for confirming, and Ld. *Kenyon* C. J. and *Grose* J. were for quashing the orders; but there not being a majority of the Court of opinion that the rule for reversing the orders should be made absolute, they consequently stood confirmed. See Peake's Ev. App. [1.]

An examination of a pauper for the purpose of removal, is not evidence, upon an appeal against that order of removal, though the pauper cannot be found.

In *Rex* v. *Nuneham Courtney, E.* 41 *Geo.* 3. 1 *East*, 373. 2 *Bott*, 653. 1 *Nol. P. L.* 491. The order was confirmed by the sessions, and it was stated that the pauper had absconded between the notice of appeal and the then next sessions, and could not be heard of; that the respondent parish of *Burcot* offered in evidence an examination in writing of the pauper, which examination was first taken upon the oath of the pauper, on the 4th *June*, 1799, by one magistrate, upon the complaint of the churchwardens and overseers of the poor of *Burcot*, and to the truth of the contents of which examination, the pauper then made oath before the justices, who thereupon made the order on that same day. But no person was present belonging to *Nuneham Courtney;* whereupon the appellants objected to the admissibility of this evidence; but the Court over-ruled the objection. But the Court of K. B. without argument, expressed a decided opinion against the admissibility of such evidence. See 1 *Phill. on Ev.* p. 229. 358.

Neither the *hearsay* of a pauper who is dead, nor his *ex parte examination in writing* taken on oath before two magistrates touching his settlement, are admissible evidence of such settlement.

Rex v. *Ferry Frystone*, otherwise *Ferry Bridge, M.* 42 *Geo.* 3. 2 *East*, 54. 2 *Bott*, 656. 1 *Nol. P. L.* 491. 1 *Phill. on Ev.* 229. 358. On appeal, the sessions confirmed the order of removal, subject to the opinion of the Court of K. B. on a Case, stating, that upon hearing the appeal the respondents in support of the order of removal produced the pauper *Catharine Hill* as a witness; who deposed, "That she was the widow of *John Hill*, and that she had heard the said *John Hill* in his life-time say, that his settlement was at *Ferry Bridge*, which he said he gained by hiring with and serving one *J. Hawkeshead*, a bricklayer in *Ferry Bridge*, for a year." The respondents then gave in evidence the examination of which the following is a copy: "East Riding of the county of *York.* —The examination of *John Hill*, late in the royal artillery, now residing at *Kilnwick* in the said riding, taken upon oath this 15th day of *April*, 1788; who saith, that his legal settlement is at *Ferry Bridge;* that he acquired the same by servitude; namely, by being hired for one whole year, and serving the said year with *J. H.* bricklayer of *Ferry Bridge;* and that he hath not gained any legal settlement elsewhere since, to the best of his knowledge and belief. — (Signed and attested.)" No proceedings were had in consequence of this examination until the order of removal, the subject of this appeal, was applied for and made. The respondents did not offer any other evidence than what is above stated in support of the order of removal; upon which the ap-

pellants objected to the admissibility of the testimony of the said *Catharine Hill* so given by her as aforesaid, and also of the said examination in evidence. But the sessions, upon the above evidence, confirmed the order; subject to the opinion of the Court of K. B. The removal was to *Ferry Frystone*, and it was afterwards certified that *Ferry Frystone* and *Ferry Bridge* were one and the same township. — Ld. *Kenyon* C. J. The point upon which the Court were divided in opinion, in the case of *Rex* v. *Eriswell*, has been since considered to be so clear against the admissibility of the evidence, either as to the hearsay of the pauper or his examination in writing, that it was abandoned by the counsel at the bar in the case of *Rex* v. *Nuneham Courtney*, (*ante*, 764.) without argument. It is true, there was no evidence there that the pauper, whose examination had been admitted in evidence, was dead: but our opinion against the general doctrine laid down by the two judges who supported the reception of the evidence in the former case, was pretty broadly hinted; and to be sure that point may now be considered to be at rest. — *Per Curiam*. Both orders quashed. *Examination of the pauper.*

And in *Rex* v. *Abergwilly*, *M.* 42 *Geo.* 3. 2 *East*, 63. 2 *Bott*, 657. 1 *Nol. P. L.* 491. It was also settled that an *ex parte* examination, in writing, of a pauper touching his settlement cannot be received in evidence of such settlement, though he be dead. 1 *Phill. on Ev.* 229. 358.

Stat. 5 *Geo.* 4. *c.* 13. § 72. [The mutiny act.] Enacts, *that it shall and may be lawful for any justice of the peace for the county, town, or place where any non-commissioned officer or soldier shall be quartered in that part of Great Britain called England, in case such non-commissioned officer or private soldier have either wife or child or children, to cause such non-commissioned officer or soldier to be summoned before him, in the town or place where such non-commissioned officer or soldier shall be quartered, in order to make oath of the place of their last legal settlement, (which oath such justice is hereby empowered to administer); and such non-commissioned officer or private soldier as aforesaid is hereby directed to obey such summons, and to make oath accordingly; and such justice is hereby required to take the examination of such non-commissioned officer or soldier in writing, and to give an attested copy of the examination so taken before him, to the person so examined, to be by him delivered to his commanding officer, in order to be produced when required; which said examination and such attested copy shall be at any time admitted in evidence, as to such last legal settlement, before any of H. M.'s justices of the peace, or at any general or quarter sessions of the peace: although such non-commissioned officer or soldier be dead, or absent from the kingdom: Provided always, that in case any non-commissioned officer or private soldier shall be again summoned to make oath as aforesaid, then on examination, or such attested copy thereof being produced by him, or by any other person on his behalf, such non-commissioned officer or soldier shall not be obliged to take any other or further oath with regard to his legal settlement, but shall leave a copy of such examination, or a copy of such attested copy of examination, if required.* 5 G. 4. c. 13. Clause relating to soldiers' settlements for their wives and children when quartered in England.

Examination of the said John Thompson.] *Rex* v. *Wykes*, *T.* 11 & 12 *Geo.* 2. *Andr.* 238. 2 *Bott*, 643. 2 *Nol. P. L.* 208. A person ought to be summoned, and be heard before he be removed; for he may produce a certificate, or give other sufficient The pauper himself ought to be summoned and heard.

Examinations. security, or shew cause otherwise why he ought not to be removed; especially as he himself perhaps, by the removal, is likely to be the greatest sufferer; and therefore natural justice requires that he be not condemned unheard.

It is not necessary in all cases that the pauper himself should be examined.

But in the case of *Rex* v. *Bagworth, E.* 22 *Geo.* 3. *Cald.* 179. 2 *Bott,* 644. 2 *Nol. P. L.* 206, 207. 223. Objection was taken to the form of the order, that it did not appear to have been made upon proper and sufficient evidence; that it was made only upon examination *of the premises;* that an enquiry generally into the subject matter is not enough; that the *pauper himself* must be examined; and was so holden in *Rex* v. *Wykes.* But by the *Court:* It cannot be necessary in all cases that the pauper should be examined. In that of an infant of tender years it would be impossible. There is no such general rule. The case in *Comberbach,* 478. is in point, in that case *Holt* C. J. says, "If it can be, 'tis fit it should be so, but not absolutely necessary." See *Rex* v. *Everdon, post,* p. 775., where Ld. *Ellenborough* speaks to the law of this case as well as to other points connected with it.

A pauper refusing to be examined.

Rex v. *Jackson and Another, E.* 27 *Geo.* 3. 1 *T. R.* 653. 2 *Bott,* 649. 2 *Nol. P. L.* 209. A rule was obtained to shew cause why an information should not go against the defendants, justices of the borough of *Kendal,* in *Westmorland,* for misbehaviour in their office, who were charged with having committed a pauper to prison, whom they were examining relative to his settlement, for *not answering a particular question* propounded to him; under which commitment he continued in prison for thirteen days, which it was contended was so manifestly illegal that they must have known they were exceeding their authority, and therefore that it must be intended that they acted from corrupt motives. But it appearing on reading the affidavits on both sides, that no corrupt motives were to be imputed to the defendants, the rule was discharged. — And *Ashhurst* J. said, he would not then decide whether magistrates have or have not a power to commit a pauper for refusing to answer proper questions put to him in the course of his examination. They certainly have a right to examine a pauper touching his settlement; and yet that would only be a shadow of a right, unless they had likewise a power of enforcing that examination, by committing the pauper for refusing to be examined. — *Buller* J. said, with regard to the power of commitment, he did not know how justices were to act, unless they had such a power. This commitment, "until he should answer," he thought right; and though the pauper continued in prison under the commitment thirteen days, that will not make the case stronger against the defendants. The party committed for refusing to be examined is to clear himself, and when he will answer must give notice to the magistrates. This is like the case of a commitment by the commissioners of a bankrupt, where the party committed must send word when he will submit and answer the questions. R. D.

59 G. 3. c. 12. Examination of prisoner having wife or child, as to settlement, made evidence.

By stat. 59 *Geo.* 3. *c.* 12. § 28. It is enacted, "that it shall be lawful for any justice of the peace to take in writing the examination on oath of any person having a wife or child, who shall be a prisoner in any gaol or house of correction, or in the custody of the keeper of any such gaol or house of correction, or who shall be in the custody of any constable or other peace officer, by virtue

of any warrant of commitment, touching the place of his or her last legal settlement; and such examination shall be signed by such justice taking the same, and shall be received and admitted in evidence as to such settlement before any justices, for the purpose of any order of removal, so long only as the person so examined shall continue a prisoner." 59 G. 3. c. 12.

(h) Of the Adjudication.

The justices to make an adjudication.

Do adjudge the same to be true.] *Suddlecomb* v. *Burwash*, *T.* 13 *W.* 2 *Salk.* 491. 2 *Bott*, 659. 2 *Nol. P. L.* 225. Order quashed, because it was only said to be complained by the officers, that the person removed was likely to become chargeable, but not adjudged so by the justices.

Rex v. *Westwood*, *H.* 4 *Geo.* 1. 1 *Stra.* 73. 2 *Bott*, 661. 2 *Nol. P. L.* 227. Order quashed, because the justices only say, *We order him to be removed to such a place, as the place of his last legal settlement*, without adjudging that to be the place.

Rex v. *Minchin-Hampton*, *T.* 3 & 4 *Geo.* 2. 2 *Sess. Ca.* 93. 2 *Nol. P. L.* 226. Order, "Whereas complaint is made to us, that such a person is now become chargeable; we do adjudge that the last place of his lawful settlement is in the parish of *Minchin-Hampton.*" Objected that here is no adjudication that he is likely to become chargeable; and quashed for this reason.

Stallinburgh v. *Haxlay*, *T.* 4 *Geo.* 1. 1 *Sess. Ca.* 131. 2 *Bott*, 661. 2 *Nol. P. L.* 224. "On examination we *do believe* the same to be true." Quashed; for a man may believe a thing on uncertain evidence.

Q. v. *Waltham Magna*, *E.* 10 *Ann.* *Sett. & Rem.* 38. 2 *Bott*, 660. "Whereas such a person is likely to become chargeable, as we are *credibly informed*, these are therefore to require you to remove." Quashed, for that here is no adjudication that he is likely to become chargeable, and this is only the belief of another.

And we do likewise adjudge that the lawful settlement.] *Bury* v. *Arundel*, *E.* 9 *W.* 2 *Salk.* 479. 2 *Bott*, 658. 2 *Nol. P. L.* 227. "Whereas complaint hath been made unto us, that *Jacob Duckin* with his wife and children came from his place of abode and last legal settlement in *Bury* to *Arundel*, we therefore require you to remove:" Naught; for there is no adjudication of the justices which was his last legal settlement, but only a complaint that *Bury* was, which doth not appear whether true or false.

Egburn v. *Hartley-Wintley*, *T.* 12 *Ann.* 1 *Sess. Ca.* 45. 2 *Bott*, 661. 2 *Nol. P. L.* 228. An order adjudges that a man was settled at such a place; and therefore they remove his widow thither. Quashed; for that here was no adjudication of the widow's settlement, and she might have gained a settlement after the death of her husband.

Rex v. *Warnhill*, *T.* 3 & 4 *Geo.* 2. 2 *Sess. Ca.* 92. 2 *Bott*, 662. 2 *Nol. P. L.* 226. 229. Adjudication that the last legal *place* of the pauper is at *Warnhill* in the county of *Berks.* Quashed; for that is no adjudication of the *settlement.*

Anon. M. 8 *W.* 2 *Salk.* 473. It was held that *legal settlement* and *last legal settlement* are the same thing; because by every new settlement the precedent is discharged.

Q. v. *St. Mary Ottery*, *M.* 12 *Ann.* *Sett. & Rem.* 32. 2 *Bott*, 661. 2 *Nol. P. L.* 224. 227. The justices in their order say that the poor person was last settled there *according to their knowledge*. By the Court: They should have said, he was last settled there: an order is a judgement, and must be certain and positive: he might have been settled elsewhere, and they not know it. Quashed.

To be provided for where removed to.

And provide for them.] The statute directs, that the place whither they are sent shall receive and *provide* for them; for which reason the same is inserted here in the order; but it seemeth that when the removal is into another county, those words are unnecessary, because ineffectual; for that the justices in one county cannot take order for the relief of poor persons in another county.

(*i*) Of suspending Orders of Removal.

49 G. 3. c. 124. Any magistrate may take the examination of an infirm pauper as to his settlement, and report to petty sessions.

Stat. 49 *G.* 3. *c.* 124. § 4. enacts, *that whenever it shall happen that any pauper is by age, illness, or infirmity unable to be brought up to the petty sessions to be examined as to his or her settlement, it shall be lawful for any one magistrate acting for the district where such pauper shall be, to take the examination of the said pauper, and to report the same to any other magistrate or magistrates acting for the said district; and for the said magistrates upon such report to adjudge the settlement of the said pauper, and make and suspend the order of removal, as fully and effectually to all intents and purposes as if the said pauper had appeared before two magistrates.*

35 G. 3. c. 101. Justices empowered to suspend orders of removal of sick or infirm persons.

By stat. 35 *Geo.* 3. *c.* 101. § 2. After reciting that *poor persons are often removed or passed to the place of their settlement during the time of their sickness, to the great danger of their lives; for remedy whereof*, it is enacted, *That in case any poor person shall from henceforth be brought before any justice or justices of the peace for the purpose of being removed from the place where he or she is inhabiting or sojourning, by virtue of any order of removal, or of being passed by virtue of any vagrant pass, and it shall appear to the said justice or justices that such poor person is unable to travel, by reason of sickness or other infirmity, or that it would be dangerous for him or her so to do, the justice or justices making such order of removal, or granting such vagrant pass, are hereby required and authorised to suspend the execution of the same until they are satisfied that it may safely be executed, without danger to any person who is the subject thereof; which suspension of and subsequent permission to execute the same, shall be respectively indorsed on the said order of removal or vagrant pass, and signed by such justice or justices: and no act done by any such poor person continuing to reside in any parish, township, or place, under the suspension of any such order shall be effectual, either in the whole or in part, for the purpose of giving him or her a settlement in the same; and the charges proved upon oath to have been incurred by such suspension of any order of removal may, by the said justices, be directed to be paid by the churchwardens and overseers of the parish or place to which such poor person is ordered to be removed, in case any removal shall take place, or in case of the death of such poor person before the execution of such order; and if the churchwardens or overseers of the parish, township or place, to*

Charges incurred by such suspension to be paid by the officers of the parish to which they are ordered to be re-

which the order of removal shall be made, or any or either of them, shall upon the removal or death of such poor person ordered to be removed, refuse or neglect to pay the said charges within three days after demand thereof, and shall not within the same time give notice of appeal as is hereinafter mentioned, it shall and may be lawful for one justice of the peace, by warrant under his hand and seal, (A. B. C. p. 779, 780.) *to cause the money mentioned in such order to be levied by distress and sale of the goods and chattels of the person or persons so refusing or neglecting payment of the same, and also such costs attending the same, not exceeding forty shillings, as such justice shall direct; and if the parish, township or place, to which the removal of such poor person is made, or was ordered to be made, before the death of such person as aforesaid, be without the jurisdiction of the justice of the peace issuing the warrant, then such warrant shall be transmitted to any justice of the peace having jurisdiction within such parish, township or place as aforesaid, who, upon receipt thereof, is hereby authorised and required to indorse the same for execution: Provided nevertheless, that if the sum so ordered to be paid on account of such costs and charges exceed the sum of twenty pounds, the party or parties aggrieved by such order may appeal to the next general quarter sessions against the same, as they may do against an order for the removal of poor persons by any law now in being; and if the court of quarter sessions shall be of opinion that the sum so awarded be more than of right ought to have been directed to be paid, such court may and is hereby directed to strike out the sum contained in the said order, and insert the sum which in the judgment of such court ought to be paid; and in every such case the said court of quarter sessions shall direct that the said order so amended shall be carried into execution by the said justices by whom the order was originally made, or either of them, or in case of the death of either of them, by such other justice or justices as the said court shall direct: Provided that nothing in this act contained shall extend to alter or abridge the power of justices of the peace to pass or punish vagrants in the manner and under the circumstances set forth in stat.* 17 Geo. 2. c. 5. (a) (*except so far as regards the power of suspending the vagrant pass, in the manner and for the causes before mentioned.*) (*See Forms at the end of this §.*)

[Margin: moved, which may be levied with costs.]

[Margin: 35 G. 3. c. 101. § 2.]

[Margin: A. B. C.]

[Margin: If costs exceed 20*l.* appeal may be made to the quarter-sessions.]

[Margin: This act not to alter the power of justices to pass or punish vagrants by 17 G. 2. c. 5. except as to suspension.]

See stat. 49 *Geo.* 3. *c.* 124. *post*, p. 776.

Rex v. *South Lynn, All Saints, M.* 56 *Geo.* 3. 4 *M. & S.* 354. Removal of *E. Smith*, widow, and her children, from *St. Margaret's* to *South Lynn, All Saints.* Order confirmed by the sessions, subject, &c. — Case: The order of removal was founded upon the examination of the pauper taken in writing before one of the said justices, and reported to the other, pursuant to stat. 49 *Geo.* 3. *c.* 124. § 4.; the pauper being at the time of her said examination sick and infirm, and unable to travel, and the justices suspended the order accordingly. The order and examination were annexed to the case. And the question made at the sessions was, whether this order was void, inasmuch as it omitted to set out that the examination was taken before one justice only,

[Margin: An order of removal made by two justices upon the examination of the pauper taken by one of them, pursuant to stat. 49 G. 3. c. 124. § 4. need not state the special circumstances of taking the examination, &c.]

(a) Repealed by stat. 3 *G.* 4. *c.* 40. which is expired: and now by stat. 5 *G.* 4. *c.* 83. § 1.; stat. 32 *G.* 3. *c.* 45. § 4. is repealed by § 2. of same act, Vol. V. tit. Vagrants.

Justices indorsing the warrant of distress for non payment of costs of suspension.

and was reported to the other Justice, so as to shew the particular jurisdiction and authority of the justices under the statute.— After argument, Ld. *Ellenborough* C. J. said, The justices have no jurisdiction at the common law, but only what is given to them by statute; and the argument is as if this were a proceeding contrary to the common law. It seems to me that the statute in question does not make it necessary for the justices to state the proceedings had under it in their order.—*Le Blanc* J. The statute enacts, that in case the pauper is by age, or other infirmity, unable to be brought up to be examined as to his settlement, it shall be lawful for one magistrate to take his examination, and report it to another, and for those magistrates, upon such report, to adjudge the settlement; but I do not find that the statute makes any alteration *in the form of the order.*—*Per Cur.* Order of sessions confirmed.

The justices cannot refuse indorsing the warrant for distress.

Shall indorse the same.] *Rex* v. *Kynaston*, *M.* 41 *Geo.* 3. 1 *East*, 117. 2 *Bott*, 680. 2 *Nol. P. L.* 328. 3*d ed.* A rule having been obtained to shew cause why a mandamus should not issue to Mr. *Kynaston*, a magistrate of the county of *Essex*, commanding him to back the warrant of distress issued by the magistrates for the borough of *Colchester*, for 20*l.* 16*s.* 3*d.*, being the expences incurred by the parish of *Lexden* in the maintenance and support of *D. Glover* and *Ann* his family, and for surgical assistance, &c. for the said *D. G.* in his illness, during the suspension of an order for removing him to his parish, and 30*s.* for the reasonable charges of the levy. It appeared that *D. G.* on the 1st of *May*, 1799, as he was driving a waggon on the public road leading through *Lexden*, had the misfortune to break both his legs, and was immediately taken to the work-house there, where he continued till the 31st of *July*. On the 6th of *May*, two justices took the pauper's examination, and made an order for removing him and his wife, who was then attending him, from *Lexden* to *Coggeshall* in *Essex;* and at the same time the magistrates indorsed an order of removal, by virtue of the stat. 35 *Geo.* 3. *c.* 101., stating that it would be dangerous to remove him at that time; and he continued there accordingly till the 31st of *July*, when the order of removal was by their permission executed. The same magistrates afterwards made an order on the parish officers of *Great Coggeshall* to repay the parish of *Lexden*, 20*l.* 16*s.* 3*d.* for expences incurred in the cure and maintenance of the pauper: and the overseers of *Great Coggeshall* not paying this within three days after demand, nor giving notice of appeal, as required by the same act, the magistrates granted a warrant of distress: but *Great Coggeshall* being without the jurisdiction of the magistrates granting the warrant, the parties applied to the defendant, who was an acting magistrate within the jurisdiction of *Great Coggeshall* to indorse the warrant of distress for execution, which he refused; whereupon the present rule was obtained. —Lord *Kenyon* C. J. After looking into the act of 35 *Geo.* 3. *c.* 101., said it was impossible to make any question upon this part of it: it is peremptory upon the magistrate under these circumstances to indorse the warrant; he has nothing to do with the propriety of making the original warrants: he acts merely ministerially; in like manner as justices do in allowing a poor rate, whose signatures are mere matter of form. The justices, indeed,

It is peremptory upon the magistrate to indorse the warrant.

by whom the original order and warrant were issued had a discretion to exercise upon the matter submitted to them: but the magistrate who merely indorses the warrant of another under this act is not answerable for the legality of it, which remains at the hazard of him who first granted it; here also the order being for payment of above 20*l.* might have been appealed against by the parties, who were dissatisfied with it, and then the merits of the question might have been discussed; but the court cannot do otherwise at present than make the rule absolute. *Appeal against the costs of an order of suspension.*

Rex v. *Bradford, M.* 48 *Geo.* 3. 9 *East,* 97. *Bolt, Cont.* 109. 2 *Nol. P. L.* 327. 388. 474. 3*d ed.* An order was made on the 7th of *July,* 1807, for the removal of *Sarah Spires,* a pauper, from *Bradford* to *Melksham* in *Wilts;* and the same justices at the same time made another order, suspending the execution of the first by reason of the sickness and infirmity of the pauper, pursuant to the 35 *Geo.* 3. *c.* 101. § 2.; and on the 16th of *September* following they made a third order, directing the first order to be executed, and the sum of 41*l.* 14*s.* 9*d.* expence, which had been incurred by the suspension of it, to be paid by *Melksham* to *Bradford.* On the 17th of *September* the pauper was carried to *Melksham;* and a motion was made at the *Michaelmas* sessions following, to enter and adjourn an appeal against the last order for the payment of the expences incurred by the suspension of the order of removal, under the before-mentioned statute, which was agreed to by the Court; but they stated these facts specially, and reserved the question for the opinion of the Court of K. B. whether by the 35 *Geo.* 3. *c.* 101. § 2. any appeal were allowed to the quarter sessions, the appellants not having given notice of appeal *within three days* after the removal of the pauper to the respondent parish, as mentioned in that clause of the act; or whether the appellants were not concluded by their neglecting to give such notice from afterwards entering and prosecuting their appeal: the Court stopped the counsel who was to have argued in support of the jurisdiction: the other side relied upon the prior words of the clause, which directs that in case the parish officers to whom an order of removal has been directed, which had been suspended, and certain charges incurred in consequence of such suspension, "shall upon the removal or death of such poor person ordered to be removed, refuse or neglect to pay the said charges *within three days* after demand thereof, and shall not *within the same time* give notice of appeal *as is hereafter mentioned;*" it shall be lawful for a justice of the peace to grant a warrant of distress to levy the charges and costs. It is true that the clause goes on to say, that if the charges and costs exceed 20*l.* the parties aggrieved by such order, "may appeal to the next sessions against the same *as they may do against an order for the removal* of poor persons *by any law now in being;*" but it was not intended that the appeal should be made after the charges had been actually levied, when it before required notice of appeal as *thereinafter mentioned,* to be given *within three days* after the demand made; but the subsequent general words must be construed with reference to the prior restriction as to the time of giving notice of appeal: and it must be understood as directing, that if notice of appeal be given within the three days after the **Of appeal against an order of justices for payment of the charges above 20*l.* of an order of suspension.**

Of the time for appeal against an order for costs of suspension.

demand, and the sum exceed 20*l.*, then the parties aggrieved may appeal against it, as they might do against an order of removal. The clause goes on to direct, that if the sessions on the appeal be of opinion that a less charge ought to have been paid, they are to amend the order, and direct that the amended order *shall be carried into execution* by, &c. This again shews that the legislature did not contemplate that there was to be any appeal after the original order had been already executed, and the larger sum levied by distress for want of the notice of appeal within three days after the demand. — But Lord *Ellenborough* C. J. held the meaning to be clearly this; if the party aggrieved by the order, and intending to appeal against the amount of the charges, will give notice of the appeal within three days after demand made, he shall be relieved from the inconvenience of a distress: but though he neglect to do so, he only subjects himself to that inconvenience; for his right of appeal, which is afterwards given, is not thereby taken away; and if he afterwards think proper to appeal within the time appointed by law for appeals against orders of removal, he is expressly empowered to do so. Order of sessions confirmed.

Appeal in case of pauper's death before actual removal, against order for costs under 20*l.*

Rex v. *St. Mary-le-Bone, Middlesex, M.* 51 *Geo.* 3. 13 *East*, 51. *Bott, Cont.* 4. 2 *Nol. P. L.* 387. *3d ed.* An order was made by two justices, dated 3d *July* 1809, for the removal of *James Harlow* from *Hitchin* in *Hertfordshire* to *St. Mary-le-Bone* in *Middlesex;* the execution of which order was at the same time suspended by reason of the sickness of the pauper, pursuant to stat. 35 *Geo.* 3. *c.* 101. By another order of the 18th of *September* following, the same justices, reciting that the said *J. H.* was then dead of the sickness under which he lately laboured, and that it had been proved on oath before them that the reasonable charges incurred by the suspension of the order of removal amounted to 5*l.* 2*s.* 8*d.*, directed those charges to be paid on demand, in pursuance of the statute, by the parish officers of *St. Mary-le-Bone* to the parish officers of *Hitchin.* The parish of *St. M.* thereupon appealed to the sessions, as well against the order of removal as against the order for the payment of the charges. The sessions dismissed both appeals, and set forth the special matter in a case, in which it was also stated, that neither of the orders of removal or suspension thereof were served on the parish officers of *St. M.*, until after the death of the pauper, which happened between the 3d and 11th of *July*, 1809: after which time the parish officers of *St. M.* were served with the above-mentioned orders, and the 5*l.* 2*s.* 8*d.* was demanded of them; at which time they gave notice of appeal to the parish officer of *H.* against the order of removal of 3d *July*, 1809, "which said order was suspended on the day of the date thereof;" and also against the order of adjudication, dated 18th *September*, 1809, &c. for the payment of 5*l.* 2*s.* 8*d.* for the charges incurred by the suspension of the said order of removal, dated 11th *Dec.* 1809. The respondents offered no evidence that the pauper was settled in the parish of *St. M.*, but contended that no appeal could lie to the sessions against the said order of removal touching the settlement, inasmuch as the same had never been executed: and that there can be no execution of an order of removal, but by delivering the pauper to the officers of the parish to which he is to be removed, until which time the parish to which he is

to be sent is not aggrieved, and until aggrieved (under all the antecedent subsisting laws relating to the settlements of the poor) no right or power of appeal can arise, and of course the sessions can have no appellate jurisdiction. That the order for the payment of the 5*l.* 2*s.* 8*d.*, the adjudged costs and charges after the suspension of the order of removal, was not served till after the death of the pauper: and as the sum is less than 20*l.* by stat. 35 *Geo.* 3. *c.* 101., no appeal is given to the sessions, and that Court has no authority to review, reduce, or alter the sums so adjudged to be paid by two justices. That the appellants contended that they were not ousted of their right to appeal, but that the respondents were bound to prove that the pauper was settled in *St. M.*, that order having been appealed against; and that the order for the payment of expences was not conclusive for the purpose of establishing the settlement of the pauper; as the effect of that order would be to oust the parish to whom the pauper was removed of their right of appeal, and to fix them with the payment of expences for a pauper who might not be legally settled with them, which was never intended by the statute.—And in the Court of K. B. these arguments were re-urged in support of the orders of sessions. — Ld. *Ellenborough* C. J. The appeal is by the 3 *W.* & *M. c.* 11. § 9. given to the party *aggrieved* by the determination of the justices respecting the settlement of the pauper; then, though the grievance grow by a subsequent statute, the party is still aggrieved by the order of removal. Before the 35 *Geo.* 3., there was no grievance to the parish to which the order of removal was made until it was executed: but that statute attaches a contingent consequence to the order itself in this case, which, coupled as it is with the order for payment of costs, makes it a *grievance*, though the pauper died before any removal in fact took place. Then the appeal against the order for costs is not against the quantum, but against the liability of the parish to pay any costs at all in this case; taking it as a consequence of the order of removal appealed against. Order of sessions quashed.

Whether a pauper must be present at the making of an order of suspen-

Rex v. *Everdon*, *M.* 48 *Geo.* 3. 9 *East*, 101. *Bott*, *Cont.* 111. 2 *Nol. P. L.* 242. On the 19th of *January*, 1805, an order was made to remove a pauper from *Everton* to *Wappenham*; at the same time an order of suspension was made pursuant to the 35 *Geo.* 3. *c.* 101. § 2. By a subsequent order of 3d *December*, 1806, reciting the death of the pauper, and that 20*l.* 8*s.* 6*d.* expence had been incurred by the suspension, the same magistrates directed the parish officers of *Wappenham* to pay that sum to *Everdon* on demand. Against this last order an appeal was lodged at the ensuing sessions, and the order quashed, subject to the opinion of the Court upon a case, stating, that the order of removal was made upon the examination of the pauper's father only, who swore *that the pauper from excessive infirmity and sickness was unable to be brought before the justices* who made the original order *for examination*, and that the said justices at the same time made the order for suspension. The pauper died without having been removed, and she had never been before the justices at any time upon the matter, nor been examined by them when they made the order of suspension. The sessions were of opinion that the justices had not power to grant the order of suspension without having the pauper before them to be ex-

If at the time of making an order of removal, the pauper be too ill to be removed, and an order of suspension be made, his presence is not necessary if he be ill, and unfit to move.

Whether a pauper must be present at the making of an order of suspension.

amined, or without the justices and overseers visiting the pauper, and therefore quashed the order for payment of money. — In support of the order of sessions it was argued, that the clause in question was expressly confined to cases where the pauper was brought *before the justices* for the purpose of being removed. On the other side it was urged, that this was a remedial law, and would be entirely frustrated by a literal construction of its words; and several instances were cited, in which a departure from the letter of the act was allowed in aid of its spirit. — Lord *Ellenborough* C. J. construed the words, "in case any poor person shall from henceforth be brought before any justice or justices of the peace for the purpose of being removed;" to mean, *in case a question concerning the removal of any poor person shall be brought before the justices of the peace, for the purpose of his removal, &c.* And he said that the language of the act adverted to the case which most generally happens, where the pauper is brought before the magistrate to be examined as to his settlement; but that it appeared from the case of *Rex* v. *Bagworth* (*ante*, 768.), that it was not necessary in all cases, though if it can be it is fit it should be so, but not absolutely necessary. And that all that the act meant was, not that where any person was brought personally, but where his case was brought judicially before the magistrates, for the purpose of his removal, that they should have power to suspend the execution of the order of removal, if it appeared to them by due examination of the facts, that from sickness or infirmity of the party the removal could not then safely be made. And he added, that in thus straining the words of the act, he did not go further than was done in *Antony* v. *Cardigan*, (*ante*, p. 338, 339.), where the description of a person *not having any child*, was construed to mean not having any child which could be a burthen to the parish where the father was hired and served. The other judges agreed, and the order of sessions quashed.

See the case of *Rex* v. *St. James's* in *Bury St. Edmund's*, (*ante*, p. 738.)

The power given to magistrates under 35 G. 3. c. 101. § 2. of ordering the charges incurred during the suspension of an order of removal to be paid by the parish to which the order is made, is confined to two cases only, viz., the death or removal of the pauper; and therefore where a pauper, during the suspension of an order of removal, be-

Rex v. *Chagford*, *H.* 1 & 2 *Geo.* 4. 4 *B.* & *A.* 235. 2 *Nol. P. L.* 245. On the 2d *December*, 1816, two justices, by their order removed *William Endacott*, with his wife and children, from *Chagford* to *Staverton*, both in the county of *Devon*. This order was on the same day suspended, on account of the illness of *William Endacott*. On the 1st of *July*, 1817, the parish officers of *Chagford*, believing the pauper sufficiently recovered to be removed, the following order was made by the magistrates: "Whereas, it is now made appear unto us, the justices within named, and we are fully satisfied that the within order of removal may be executed without danger; we do, therefore, hereby order the same to be forthwith put in execution accordingly: and whereas, it is duly proved to us, upon oath, that the sum of twenty-two pounds seventeen shillings and one penny-halfpenny, hath been incurred by the suspension of the within order of removal; we do, therefore, order and direct the churchwardens or overseers of the poor of the parish of *Staverton*, to which parish the said *William Endacott*, is ordered to be removed, to pay the said sum of 22*l.* 17*s.* 1½*d.* to *Richard Thorn* on demand." Immediately after this order was made, it was ascertained that the pauper was still too ill to be removed, and

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came irremovable in consequence of an estate descending to him: Held, that such a case was not within the act, and that the pauper, not having been removed, no order for the payment of any charges incurred during the suspension of the original order of removal could be made.

accordingly, on the seventh day of the same month, the justices signed a second order of suspension in the usual form. On the 16th *May*, 1819, the pauper's father died at *Chagford*, and by his death, two freehold houses in the parish of *Chagford*, descended to the pauper, as heir at law. The parish officers of *Chagford*, thereupon, ceased to relieve the pauper and his family. On the 7th *February*, 1820, another order was made, of which the following is a copy: "Whereas it is now made appear unto us, the justices named in the order of removal, and suspension thereof hereunto annexed, and we are fully satisfied, that such order of removal may be executed without danger; we do, therefore, hereby order the same to be forthwith put in execution accordingly: and whereas, it is duly proved to us, upon oath, that the sum of sixty pounds and nine shillings hath been incurred by the suspension of the said order of removal; we do, therefore, order and direct the churchwardens and overseers of the poor of the parish of *Staverton*, to which parish the said *William Endacott* is ordered to be removed, to pay the said sum of sixty pounds and nine shillings to *Richard Thorn* on demand." The pauper was never removed, but on the 18th of *February*, 1820, the appellants were, for the first time, served with the order of removal, and with the several other orders herein before mentioned, and on the same day payment was demanded of the several sums of 22*l.* 7*s.* 1½*d.* and 60*l.* 9*s.* as the expenses incurred by the suspension. Against these orders, the parish of *Staverton* appealed, and gave the following notice. "Take notice, that, we the churchwardens and overseers of the poor of the parish of *Staverton*, in the said county of *Devon*, do intend at the next general quarter sessions of the peace, to be holden at the Castle of *Exeter* in and for the said county of *Devon*, to commence and prosecute an appeal against an order made under the hands of *Baldwin Fulford* and *George Gregory*, two of his majesty's justices of the peace in and for the said county of *Devon*, and bearing date the 1st *July*, 1817, so far as the same order directs the churchwardens or overseers of the poor of the parish of *Staverton*, to pay the sum of 22*l.* 17*s.* 1½*d.* to *Richard Thorn*, as the sum incurred by the suspension of an order of the said *Baldwin Fulford* and *George Gregory*, for and concerning the removal of *William Endacott* and *Winifred*, his wife, *John Endacott*, *Mary Endacott*, and *Elizabeth Endacott*, their children, from and out of the said parish of *Chagford*, into our said parish of *Staverton*. And also, take notice, that we, the churchwardens and overseers of the poor of the parish of *Staverton*, in the said county of *Devon*, do also intend, at the next quarter sessions of the peace to be holden at the Castle of *Exeter*, in and for the said county of *Devon*, to commence and prosecute an appeal against another order, under the hands of the said *Baldwin Fulford* and *George Gregory*, and bearing date the 7th day of *February*, 1820, so far as this order directs the churchwardens and overseers of the poor of the parish of *Staverton*, to pay the sum of 60*l.* 9*s.* to *Richard Thorn*, as the sum incurred by the suspension of the said order, for and concerning the removal of the said *William Endacott*, and *Winifred* his wife, and the said *John Endacott*, *Mary Endacott*, and *Elizabeth Endacott*, their children, from and out of the said parish of *Chagford* into our said parish of *Staverton*." The sessions, on appeal, quashed

R. v. Chagford. both these orders, subject to a case for the opinion of the court of K. B. — After argument, *Abbott* C. J. said, in this case, we are called upon to put a new construction on this act of parliament, which was passed in order to prevent a grievance arising from the too great temptation afforded to parish officers by orders of removal, to convey paupers from one place to another during sickness. The second section recites, that poor persons are often passed to the place of their settlement during the time of their sickness, to the great danger of their lives; and it gives a power to magistrates, in order to remedy this inconvenience, of not carrying their order into immediate effect, but of suspending its operation for a time. But then, in order to prevent this from producing any hardship to the removing parish, it provides, that no act done by the pauper during the suspension shall give him a settlement, and empowers the magistrates to order the intermediate charges to be paid by the parish to which the order is made, in case any removal shall take place, or in case of the death of such poor persons before the execution of such order. This power, however, seems to me to be confined to these two cases only, viz. the removal and death of the pauper. Whether or not it would have been expedient for the legislature to have provided for the present case, it is for this Court to say. All that we can do is, to determine that the non-removal of the pauper prevents the Case from falling within the act. I should have thought, indeed, that as the order of the magistrates, not being within the act, was altogether nugatory, the proper course for the sessions to have pursued would have been, not to have quashed the order, but to have dismissed the appeal. However, as they have done substantially right, I think their order ought to be confirmed. — *Bayley* J. observed, that a very long period had elapsed, during which, this order remained suspended, and no notice of it was given to the opposite party. If that notice had been given, (and there are no words in the act that supersede the necessity of it,) it might have enabled the other parish to have made prompt inquiry, and to have ascertained the fact relative to the settlement of the pauper. — *Holroyd* J. Thought the statute could not be construed so as to apply to this Case, although, probably, the legislature would, if it had occurred to them, have provided for it. Order of sessions confirmed.

49 G. 3. c. 124. st. 35 G. 3. c. 101. recited. By stat. 49 *Geo.* 3. *c.* 124., reciting, that whereas by stat. 35 *Geo.* 3. *c.* 101., it is amongst other things enacted, that in case any poor person shall be brought before any justice or justices of the peace for the purpose of being removed from the place where he or she is inhabiting or sojourning, by virtue of any order of removal, or of being passed by virtue of any vagrant pass, and it shall appear to the said justice or justices that such poor person is unable to travel by reason of sickness or other infirmity, or that it would be dangerous for him or her so to do, the justice or justices making such order of removal or granting such vagrant pass, are required and authorised to suspend the execution of the same until they are satisfied that it may be safely executed without danger to any person who is the subject thereof, and that the charges proved upon oath to have been incurred by such suspension of any order of removal, may by the said justices be directed to be paid by the churchwardens and overseers of the

parish or place to which such poor person is ordered to be removed, in case any removal shall take place, or in case of the death of such poor person before the execution of such order: and by the same act it is further enacted, that in case of an appeal against any order for the payment of such charges, if the court of quarter sessions shall be of opinion that the sum so awarded be more than of right ought to have been directed to be paid, such Court may and is thereby directed to strike out the sum contained in the said order, and insert the sum which in the judgment of such Court ought to be paid; and in every such case the court of quarter sessions shall direct that the said order so amended shall be carried into execution by the said justices by whom the order was originally made, or either of them, or in case of the death of either of them, by such other justice or justices as the Court shall direct: And whereas it is expedient that the power of putting an end to the suspensions of any such order of removal or pass, and of executing the several or other authorities aforesaid, should not be confined to the order of the justice or justices making such order or pass:" it is enacted, *that, in all cases wherever the execution of any order of removal or of any vagrant-pass shall be hereafter suspended by virtue of the said recited act, it shall be lawful for any other justice or justices of the peace of the county or other jurisdiction within which such removal or pass shall be made, to direct and order that the same shall be executed, and to direct the charges to be incurred as aforesaid to be paid, and to carry into execution any such amended orders as aforesaid, as fully and effectually to all intents and purposes as the said respective powers and authorities can or may be executed by the said justices who shall make any such order of removal, or by the justice who shall grant any such pass as aforesaid.*

Suspending orders of removal.

49 G. 3. c. 124.

In all cases when any order of removal or vagrant-pass shall be suspended, any other justice of the county or place where such removal or pass shall be made, may order the same to be executed, &c.

Rex v. *The Inhab. of Alnwick, M.* 2 *G.* 4. 5 *B. & A.* 184. Two justices, by their order dated, the 6th *August*, 1814, removed *Margaret Walker*, a pauper, from the parish of *Alnwick* in *Northumberland*, to the parish or parochial chapelry of *Haydon*, in the same county. On an appeal against this order at the *Mich.* sessions in 1820, it was discharged, subject, &c. Case: — The pauper, at the time the above order, dated 6th *August*, 1814, was made, was extremely ill, and in such a state of health that she could not be removed without danger; the execution of the order was, therefore, suspended by an indorsement thereon in the usual form. On or about the 6th *September*, 1814, a copy of the said order of removal and indorsement was delivered to and served upon one of the overseers of the poor of *Haydon*, by a person sent and authorised by one of the overseers of the poor of *Alnwick*, such person not then having the order with him; and on the 4th *October*, 1815, another part of the original order of removal and indorsement, was delivered to and served upon one of the overseers of the poor of *Haydon* by the overseers of the poor of *Alnwick*. This last mentioned document, so served on the 4th *October*, 1815, had not been executed by the removing justices on the 6th *August*, 1814, but was executed by them in *September*, 1815. It however bore date the 6th *August*, 1814. The order originally executed was not at any time shewn to any of the overseers of *Haydon*. The suspension of the execution of the said order, on account of the sickness of the pauper, was taken off in *August*, 1819, and a fur-

An order of removal was dated 1st *August* 1814, and an order of suspension indorsed thereon, in consequence of the sickness of the pauper; and a copy of such order and indorsement was, in 1814, served upon the appellants, but the original order not produced at the time of serving such copy; and, subsequently, in 1815, another part of the order and indorsement executed by the same justices, but

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bearing date in *August* 1814, was served upon the appellants. The pauper was not removed till 1819, when an appeal was duly entered: Held, that the services of the original order of removal in 1814 and 1815 were both defective, and that the appeal was made in time, notwithstanding 49 G. 3. c. 124. § 2.

ther order was then indorsed by the justices on the order of removal for the payment, by the overseers of *Haydon*, to the overseers of *Alnwick*, of the sum of 161*l.* 17*s.* 5*d.*, being the charges proved upon oath to have been incurred by the suspension of the order of removal. On the 5th of *September*, 1820, the pauper was duly removed from *Alnwick* to *Haydon*, and an appeal against the order of removal was entered at the *Mich.* sessions, 1820. When the case was called on, and the facts above stated had been proved, it was contended, on the part of the respondents, that the appellants could not be heard, as they had omitted to appeal against the order of removal within the time allowed by law: the 49 *G.* 3. *c.* 124. § 2., enacting, that when the execution of any order of removal shall be suspended, the time of appealing against such order shall be computed according to the rules which govern other like cases from the time of serving such order, and not from the time of making such removal under and by virtue of the same. The court, however, permitted the case to proceed, and the appeal was allowed. — After argument; *Abbott* C. J. The objection made here to the judgment of the court of quarter sessions, is, that they have allowed this appeal, when, in point of law, the appellants were not entitled to it, not having appealed within the time allowed by law. That question depends entirely upon the validity of the service of the order. Now, that service, in order to be valid, must either be by delivery of the order itself, or by leaving a copy of the order, and at the same time producing the original. It is admitted, that the service in 1814 was defective; but then in 1815 there was a second service. Now, if that was the service of a copy, it was bad, for the same reason as vitiated the previous service. It is, however, contended, that this was the service of a new original order. But if we were to hold that to be so, we should, as it seems to me, give to it an effect not intended by the justices who executed it; for if they had intended it as a new order, they would have given to it a date corresponding with the time of its execution. I think that they never could have intended it as a new order, but only as an authenticated copy of their former order; and that the court of sessions were right in so treating it. In that view of the case, it is clear that both services are defective, and, consequently, that the appeal was in time, and the order of sessions is therefore right. — Order of sessions confirmed.

How the time of appealing shall be computed.

Stat. 49 *G.* 3. *c.* 124. § 2. enacts, *that when the execution of any such order of removal shall be suspended, the time of appealing against such order shall be computed according to the rules which govern other like cases from the time of serving such order, and not from the time of making such removal under and by virtue of the same.*

Order of removal suspended in case of sickness, may also extend to other persons named in the order to prevent the separation of a family.

§ 3. And, in order to avoid any pretence for forcibly separating husband and wife, or other persons nearly connected with or related to each other, and who are living together as one family at the time of any order of removal made or vagrant-pass granted, during the dangerous sickness or other infirmity of any one or more of such family, on whose account the execution of such order of removal or vagrant-pass is suspended; it is further enacted and declared, *That where any order of removal or vagrant-pass shall be suspended by virtue of this or of the said recited act, on account*

of the dangerous sickness or other infirmity of any person or persons thereby directed to be removed or passed, the execution of such order of removal or vagrant-pass shall also be suspended for the same period with respect to every other person named therein, who was actually of the same household or family of such sick or infirm person or persons at the time of such order of removal made or vagrant-pass granted. Removing an order of suspension. 49 G. 3. c. 124.

The Form of Suspension of an Order of Removal, to be indorsed on the back thereof, may be thus:

WHEREAS it doth appear unto us J. P. & K. P. *the justices within named, that* A. P. *the pauper within ordered to be removed is at present unable to travel by reason of sickness and infirmity* [or, *that it would be dangerous for him so to do*, as the case may be]: *We do therefore hereby suspend the execution of the within order of removal, until it shall be made appear unto us, that the same may safely be executed without danger. Given under our hands, the ——— day of ———.* J. P.
K. P.

Form of a subsequent Permission to execute such Order of Removal, to be indorsed thereon: And Order for Payment of the Expences incurred by such Suspension.

WHEREAS it is now made appear unto us, J. P. & K. P. *the justices aforesaid, and we are fully satisfied, that the within order of removal may be executed without danger: We do therefore hereby order the same to be forthwith put in execution accordingly. And whereas it is duly proved to us upon oath* [if such pauper die, say, *that the said* A. P. *the pauper above mentioned is dead, and*] *that the sum of* —— *hath been necessarily incurred by the suspension of the within order of removal; We do therefore order and direct the churchwardens or overseers of the poor of the parish of* ———, *to which parish the said* A. P. [*was*, if the pauper be dead] *is ordered to be removed, to pay the said sum of* ——— *to* A. O. *upon demand. Given under our hands the* ——— *day of* ———. J. P.
K. P.

(A.) Information of an Overseer of the Poor that the Expences directed to be paid on taking off the Suspension from an Order of Removal, have been refused or neglected to be discharged; on stat. 35 G. 3. c. 101. § 2. p. 769. *From Y. C. P.* 111. A.

County of ——— } *THE information and complaint of* O. P., *overseer of the poor of the parish of* ———, *in the said county, made on oath before me* J. P. *esquire, one of his majesty's justices of the peace in and for the said county, the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———. *Who says, that by an order under the hands and seals of* J. P. *and* K. P. *esquires, two of his majesty's justices of the peace, in and for the said county of* ———, *and bearing date the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and*

36 G. 3. c.101. § 2. *A. P. a pauper, then actually chargeable to the said parish of ———, was ordered to be removed from the said parish of to the parish of ———, in the county of as the place of his last legal settlement, but the execution of which order of removal was by the said two justices, by indorsement on the said order, suspended for the reason therein expressed, and further that by a subsequent indorsement on the said order of removal, under the hands of J. P. and K. P. esquires, two of his majesty's justices of the peace, in and for the said county of ———, bearing date the ——— day of ———, in the year of our Lord one thousand eight hundred and ———, the said suspension was removed with a permission to execute the said order, and also that it appeared unto them the said last mentioned justices, that the sum of ——— had been incurred, by the suspension of the said order of removal, and that they the said last mentioned justices did therefore order and direct the churchwardens and overseers of the poor of the parish of ———, to which parish the said A. O. was ordered to be removed, to pay the said sum of ——— to O. P. upon demand, which said order of removal has since been carried into execution, and the said sum duly demanded of and from N. O. one of the overseers of the poor of the parish of aforesaid, by him the said O. P. on the ——— day of last, but which was then refused, and has been and still is neglected to be paid, and that no notice of appeal has been given against the said order within three days from the time of making such demand as aforesaid, nor at any time since: The said complainant therefore prays such redress in the premises as to law doth appertain.*

Before me, O. P.
J. P.

B.

(B.) Summons thereon.

County of ——— } To the constable of ———.

WHEREAS information and complaint hath been made before me J. P. esquire, one of his majesty's justices of the peace for the said county, on the oath of O. P. overseer of the poor of the parish of ———, in the said county, that by an order, &c. [set forth the circumstances detailed in the information.] *These are therefore to require you forthwith to summon the said N. O. to appear before me at ——— in the said county, on ——— the ——— day of ———, at the hour of ——— in the ——— noon of the same day, to answer to the said information and complaint, and to be further dealt with according to law. And be you then there to certify what you shall have done in the premises. Herein fail you not. Given under my hand and seal, the ——— day of ——— A. D. 18———.*

C.

(C.) Warrant of Distress thereon.

County of ——— } To the Churchwardens and Overseers of the poor of the parish of ———, in the said county.

WHEREAS it has been duly made appear unto me J. P. esquire, one of his majesty's justices of the peace in and for the said county of ———, as well upon the oath of O. P. overseer

of the poor of the said parish of ———, *as otherwise, that by an order under the hands and seals of* J. P. *and* K. P., *esquires, two of his majesty's justices of the peace in and for the said county of* ———, *and bearing date the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———, A. P., *a pauper, then actually chargeable to the said parish of* ———, *was ordered to be removed from the said parish of* ———, *to the parish of* ———, *in the county of* ———, *as the place of his last legal settlement, but the execution of which order of removal was by the said justices, by indorsement on the said order, suspended for the reason therein expressed; and further that by a subsequent indorsement on the said order of removal under the hands of* J. P. *and* K. P. *esquires, two of his majesty's justices of the peace in and for the said county of* ———, *bearing date the* *day of* ———, *in the year of our Lord one thousand eight hundred and* ———, *the said suspension was removed with permission to execute the said order, and also that it appeared unto them the said last mentioned justices, that the sum of* ——— *had been necessarily incurred by the suspension of the said order of removal, and that they the said last mentioned justices did therefore order and direct the churchwardens and overseers of the poor of the parish of* ———, *to which parish the said* A. P. *was ordered to be removed, to pay the sum of* ——— *to* O. P. *upon demand, which said order of removal has since been carried into execution, and the said sum duly demanded of and from* N. O., *one of the overseers of the poor of the parish of* ——— *aforesaid, by him the said* O. P. *on the* ——— *day of* ——— *last, but which was then refused, and has been and still is neglected to be paid, and that no notice of appeal has been given against the said order within three days from the time of making such demand as aforesaid, nor at any time since. I do therefore hereby require you to levy the money mentioned in the said order, by distress and sale of the goods and chattels of the said* N. O., *the person refusing or neglecting payment of the same, and also the further sum of* [this sum not to exceed forty shillings, according to stat. 35 *G.* 3. *c.* 101. § 2.] *being the costs attending the same. And if within the space of four days next after such distress by you taken the said respective sums of* ——— *and* ——— *shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you detain the said respective sums, rendering to the said* N. O. *the overplus on demand. Given under my hand and seal the* ——— *day of* ———, *in the year of our Lord one thousand eight hundred and* ———. 35 G. 3. c. 101. § 2.

Rex v. *The Inhab. of Englefield, H.* 51 *Geo.* 3. 13 *East*, 317. *Bott. Cont.* 112. 2 *Nol. P. L.* 243. Two justices made an order, dated the 21st *March* 1809, for the removal of *Joseph Timms*, *Elizabeth* his wife, and their two infant children, by name, from *Englefield* in the county of *Berks*, to *Cassington* in *Oxfordshire*; and by another order of the same date reciting that the said *Joseph Timms* was then unable to travel by reason of sickness and infirmity of body, they suspended (by virtue of the stat. 35 *Geo.* 3. *c.* 101. § 2.) the execution of the first order as to *Joseph Timms*, until it should be made appear to them that he was sufficiently recovered from his illness to be removed without danger; and afterwards they made a third order, dated 17th *March* 1810, by

Order of removal suspended on account of the husband's sickness, who afterwards dies, and the wife and children removed without taking off the suspension.

R. v. Englefield.

which after stating that it had been proved on oath before them that *Joseph Timms*, named in the order of removal first mentioned, died on the 7th instant, and that the reasonable charges incurred by the suspension of the said order of removal amounted to 41*l*. 4*s*. 6*d*. they directed the parish officer of *Cassington*, to which the said pauper was to have been removed, to pay those charges to the parish officers of *Englefield*. After the death of *Joseph Timms*, his wife and children were removed, under the first mentioned order, from *Englefield* to *Cassington*; and on appeal by the latter parish against such order, and also the order for the payment of the charges, all the three orders above mentioned were quashed as insufficient, inasmuch as the order suspending the order of removal had not been itself taken off by an order of magistrates on the death of *Joseph Timms*; subject to the opinion of the court on these facts. A difficulty occurred upon the opening of the case which the Court thought could not be got over, upon what ground the sessions could quash these orders which upon the face of them were all good, when the real objection to the removal of the wife and two children, if any, was the want of another order of magistrates taking off the suspension of the original order of removal. The respondents' counsel indeed suggested that the death of the husband operated as a natural death to the order of suspension, but the Court did not decide the case on that ground, and it was observed, *e contra*, that the terms of the order of suspension did not apply to the case of death, but it was to operate till the sick person could be safely removed. For the other reason, however, the Court quashed the order of sessions, and *Le Blanc* J. referred to the precedent of a permission to remove after an order of suspension, given in the new (viz. the 21st) edition of *Burn's Justice*, as being best adapted to such a case.

Of filing orders of removal at the sessions; and making a record of the whole proceedings.

So much concerning the usual form of an order of removal: and after such order and adjudication is made, that the same may appear upon record afterwards, in order to charge the parish, it was said by *Holt* Ch. J. (1 *Salk*. 406.) that the most regular way for the justices to proceed is to make a record of the complaint and adjudication, and upon that to make a warrant to the churchwardens and overseers to convey the persons to the parish to which they ought to be sent, and deliver in the record by their own hands into Court the next sessions, to be kept there amongst the records, to charge the parish. But how such record shall charge the parish is not perhaps very evident; unless it shall appear likewise, that a removal was made in pursuance of such order; otherwise, how shall the parish be charged by an order which possibly they know nothing of, and consequently could have no opportunity to appeal against? It is usual, in in some places, for the overseers who made the removal, to bring the original order to the next sessions, and there make oath, that they removed the party in pursuance of such order, and if then there appeared to be no appeal against it, the order is confirmed by the Court, and filed amongst the records. And although such confirmation is merely void, because the sessions have no jurisdiction therein, unless in the case of appeal, which here is not; yet such confirmation is also superfluous and needless, for the order not appealed against is final without more. And as such order is a record of itself, and contains in it the adjudication of the justices, it seemeth, that the Court may re-

cord thereupon likewise, that no appeal was made, for in that case they are the proper judges, whether an appeal was made or not. But still it seemeth, that unless it be upon appeal, they have no power to inquire concerning the removal, for that as to them is extrajudicial: but the justices who made the order, have a right to see it executed; and therefore they may inquire upon oath, whether the removal was duly made; and if it was, they may record the whole. Which record of the whole proceedings, being delivered in at the next sessions, and the Court thereupon recording likewise, that no appeal was made, in such case perhaps the parish may be concluded. And the form thereof may be thus:

County of ——— } BE *it remembered, that on the nineteenth day of* January, *in the thirty-second year of the reign of our lord George the second, of the united kingdom of* Great Britain *and* Ireland, *king, defender of the faith, at* Middleton *in the county aforesaid,* Roger Thirbeck, *overseer of the poor of the township of* Middleton *aforesaid in the county aforesaid, cometh before us,* John Moore *esquire, and* Richard Burn *clerk, two of the justices of our said lord the king assigned to keep the peace of our said lord the king within the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, and of the* quorum, *and complaineth to us the said justices, and giveth us to understand and be informed, that* Solomon Caradice, *son of* Alice Caradice, *aged nine years, hath come to inhabit and doth inhabit in the said township of* Middleton *in the county aforesaid, and is become chargeable to the said township, and that the said* Solomon Caradice; *hath not gained any legal settlement within the township, nor hath produced any certificate owning him the said* Solomon Caradice *to be settled elsewhere; and thereupon he the said* Roger Thirbeck *prayeth our warrant to remove and convey the said* Solomon Caradice *to the parish or place where he the said* Solomon Caradice *was last legally settled.*

And on the said nineteenth day of January *in the year aforesaid, at* Middleton *aforesaid, in the county aforesaid,* Margaret Caradice, *grandmother of the said* Solomon Caradice, *cometh before us the justices aforesaid, and upon her oath on the holy gospel to her then and there by us the said justices aforesaid administered, deposeth and sweareth, that she the said* Margaret Caradice *had a daughter whose name was* Alice Caradice, *which* Alice Caradice *was never married, and is now dead, and that she the said* Alice Caradice *did bear the said* Solomon *her son, at the parish of* Beetham *in the county aforesaid, and that the said* Solomon *hath been carried or gone about the country ever since in a state of vagrancy, that is to say, wandering and begging, and doth now inhabit in the said township of* Middleton *with* William Caradice, *grandfather of him the said* Solomon.

Whereupon, and on due consideration had of the premises, we the justices aforesaid on the said nineteenth day of January *in the year aforesaid, at* Middleton *aforesaid, in the county aforesaid, do make our warrant under our hands and seals in the form and words following; that is to say,* [here set forth the warrant of removal.]

And afterwards, on the twenty-first day of January *in the year aforesaid, at* Middleton *aforesaid, in the county aforesaid, the said* Roger Thirbeck, *overseer of the poor aforesaid, cometh before us*

the justices aforesaid, and upon his oath on the holy gospel to him by the said justices administered, deposeth and sweareth, that on the twentieth day of January *in the year aforesaid, he the said* Roger Thirbeck *did remove and convey the said* Solomon Caradice *from and out of the said township of* Middleton *to the said parish of* Beetham, *and him the said* Solomon Caradice, *together with a true copy of our warrant aforesaid, did deliver to* O. P., *overseer of the poor of the parish of* Beetham *aforesaid, at the parish of* Beetham *aforesnid, in the county aforesaid. In witness whereof, we the said justices, at* Middleton *aforesaid, in this county aforesaid, the twenty-first day of* January *in the year aforcsaid, to this present record do set our hands and seals.*

And to this may be annexed the order of removal, confirmed at the sessions on appeal or not appealed against. And it may be proper to have duplicates; one filed at the sessions, and the other kept by the township.

Penalty on refusing to receive persons removed from one county, riding, city, town corporate, or liberty to another.

By stat. 3 *W. c.* 11. § 10. *ante*, § XVII. (1.) p. 725. there is a penalty of *5l.* inflicted on the churchwardens or overseers not receiving a person sent by warrant of removal. On which the following case happened: —

Where the removal from *parish to parish*, a refusal to receive is an *indictable* offence.

Rex v. *Davis, M.* 28 *Geo.* 2. *Say.* 163. 1 *Bott*, 338. 2 *Nol. P. L.* 373. 3 *ed.* Indictment for refusing to receive a pauper, sent by order of two justices to the liberty of the *Tower*. Plea not guilty. Verdict against the defendant. It was moved in arrest of judgment, that the 3 *W.* 3. *c.* 11., having directed another method of punishment; to wit, a fine to be levied by warrant of distress in a summary way, that should be strictly pursued. — *Denison* J. If a statute create a new offence, and give a punishment, that rule must be followed; but if the offence was before at common law, and a new punishment only given, it is indictable also. So if one statute give one punishment, and another statute give another punishment, the prosecutor has his election. This was an offence before the 3 *W.* 3. Such a parish officer might have been indicted on the 13 & 14 *C.* 2. *c.* 12., or what would have become of a pauper in case of disobedience between the passing those acts; but the 3 *W.* 3. *c.* 11., does not relate to removals from parish to parish, but from county to county; and therefore there is no remedy but by indictment. — *Foster* J. In all cases where a justice has power given him to make an order, and direct it to an inferior ministerial officer, and he disobeys it, if there be no particular remedy prescribed, it is indictable. And judgment was given against the defendant. To which may be added, that the statute of 13 & 14 *C.* 2. *c.* 12. requires, in express words, that such officer refusing *shall be bound over to the assizes or sessions, there to be indicted. Vide ante*, p. 725. See also Vol. III. p. 39.

(3.) Of Persons removed returning after Removal.

Persons removed returning to the place removing from, must be charged therewith on oath. 36 G. 3. c. 101. § 6.

If the person removed returns of his own accord, without a certificate, the stat. 13 & 14 *C.* 2. *c.* 12. *ante*, p. 725. [and also the vagrant act of the 17 *Geo.* 2. *c.* 5., now Repealed by stats. 3 *Geo.* 4. *c.* 40. § 1. 5 *Geo.* 4. *c.* 83. § 1. p. 769. note (*a*).] has directed that he shall be sent to the house of correction. In the case of *Rex* v. *Angell, T.* 8 *Geo.* 2. *Cas. Tem. Hardw.* 124. 2 *Bott*, 681. 2 *Nol. P. L.* 255, 256. The justices of *Berkshire* held a petty sessions to search after vagrants, and a poor man residing in the parish of

field, being examined, confessed himself to be settled in the parish of *Sunning*; whereupon the justices ordered him to be removed to *Sunning*. On his return from *Sunning* without a certificate, the defendant, who was one of the justices that had been present at the said petty sessions, did, without any summons, or oath made of his return, commit the man to the house of correction, where he was kept three days. Upon this, the Court was moved to grant an information against the justice. The Court allowed the transactions of the petty sessions in this case to be irregular, because there was no complaint made of his being chargeable or likely to be chargeable to the parish of *Bingfield*; but yet, as that was only a mistake of judgment, the Court would not have thought it worthy of punishment; but the sending him to the house of correction, after having convicted him unheard, being contrary to natural justice, they were inclinable to grant an information; but as no malice appeared in the justice, the Court allowed the prosecutor to accept of some proposal made by the justice, to make him satisfaction.

Returning after removal.

In the case of *Baldwin* and his wife v. *Blackmore* esquire, *E.* 31 *Geo.* 2. 1 *Burr.* 595. 2 *Bott*, 682. 2 *Nol. P. L.* 252. 254. *Baldwin* and his wife were removed by order of two justices from *Marsden* to *Banknewton*; which order was not appealed against. Afterwards, they both of them returned to *Marsden* without bringing a certificate; complaint of which being made in writing and upon oath to the defendant a justice of the peace, he issued his warrant to bring them before him; who being accordingly brought, and the facts fully proved upon oath, he committed them to the house of correction, *until they should be discharged from thence by due course of law.* Upon the trial of this cause, there was a verdict for the plaintiff, and 1*s.* damages, subject to the opinion of the Court, on the two following questions: 1. Whether there ought not to have been a previous conviction of vagrancy? 2. Whether the wife could be convicted of vagrancy, or be liable to be sent to the house of correction for returning without a certificate, as she only accompanied and resided with her own husband? On the argument of this cause, Ld. *Mansfield* C. J. desired to be informed how the usage had been about sending the wife to the house of correction with the husband: (though it would not indeed, as he observed, alter the law.) Afterwards this case being mentioned as standing for the opinion of the Court, it was said for the defendant, that he had several certificates of its being the practice for justices to commit the wife, as well as the husband, for returning to the parish from whence they had been removed, although she so returned with her husband.— Ld. *Mansfield* C. J. delivered the resolution of the Court: He observed that it was manifest the justice had not acted intentionally wrong. And it is plain that the jury were of that opinion, as appears by their giving only 1*s.* damages. The Court would gladly therefore have leaned towards excusing him from suffering for what he had honestly done, if they could have found him justifiable by any legal excuse. But there is one fatal objection to his proceeding, which we cannot get over, and which puts all the other points out of the case; and that is, that the warrant of commitment is illegal. The legality of the warrant depends upon two acts of parliament, or at least upon one of them. For there are two acts

The warrant of commitment must be for a time definite.

Returning after removal.

of parliament, upon one of which two this warrant must be founded; though it doth not appear upon which of the two the justice proceeded. These two acts are stat. 13 & 14 *C.* 2. *c.* 12. (a law made before certificates under the late acts existed); and stat. 17 *Geo.* 2. *c.* 5., (which related to persons returning without bringing such a certificate, and is repealed by stat. 3 *Geo.* 4. *c.* 40.; see 5 *Geo.* 4. *c.* 83. § 3. tit. Vagrants.) (See *ante*, § XVII. 1. p. 721.) Now the warrant is not within the former of these acts: nor is the case itself within it. These persons did not go to any parish carrying with them a certificate of their being inhabitants of their proper parish. The commitment is, *till discharged by due course of law;* whereas upon this act it should have been, to the house of correction, *there to be punished as a vagabond*, or to a public workhouse, *there to be employed in work and labour.* Nor can this warrant be good on the latter act; because the power given to the justice by that act is, to commit such offenders to the house of correction, *there to be kept to hard labour for any time not exceeding one month:* Whereas this warrant is quite general: It is an indefinite commitment; not for a precise limited time as the act directs. (See now stat. 5 *Geo.* 4. *c.* 83. § 3. tit. Vagrants.) Therefore the warrant of commitment is totally illegal; and consequently the plaintiff is entitled to the damages that he has recovered.

The commitment must state to what place the pauper returned.

Rex v. *Elere Cole*, *M.* 12 *Geo.* 3. 2 *Bott*, 683. 2 *Nol. P. L.* 255. 258. A motion was made to discharge a man out of custody upon the following objections: 1st, The commitment does not state *to what place* the man returned: 2dly, Nor that he returned without a certificate: 3dly, That it did not appear that he had been before convicted as a vagrant, which prior conviction alone, under stat. 17 *Geo.* 2. *c.* 5. (repealed *supra*,) gave a power of commitment for a month. The commitment was "for returning from "the parish of *St. Sepulchre's* after a legal warrant of removal "from the parish of the *Holy Trinity*." And the Court agreed that the commitment could not be supported, as it did not say *to what place* he returned.

Returning, and residing in a tenement of 10*l.* a-year value.

Rex v. *Fillongley*, *M.* 29 *Geo.* 3. 2 *T. R.* 709. 2 *Bott*, 684. 2 *Nol. P. L.* 224. The pauper returned to the parish from whence he had been removed, and resided upon a tenement of the yearly value of 10*l.* and upwards: the Court said he had a right to return, for that an order of removal only prevents a return in a state of vagrancy.

Mann v. *Davers*, Clerk, *M.* 60 *Geo.* 3. 3 *B.* & *A.* 103. A conviction stated, that the plaintiff, having been brought before a magistrate on an information charging him with having unlawfully returned, without a certificate, to a parish from which he had been removed, and that upon that occasion he confessed himself guilty: the Court of K. B. held, that this conviction was good upon the face of it, and that it was not necessary to state in it expressly any act of vagrancy, it being for the party convicted to shew in his defence that he did not return in a state of pauperism. — *Abbott* C. J. said, the returning to the parish without a certificate, was, at least, *primâ facie* evidence of his being an idle and disorderly person, and then it was for the defendant to shew that he had a lawful excuse for returning. — *Best* J. said, this conviction appears to be in the ordinary form; nevertheless I must say that the parish officer acted most improperly in taking up a man as a

vagrant, who was at work in the harvest field. But when he was before the magistrate, and alleged no fact to shew that he was not, as he appeared to be, in a state of vagrancy, the magistrate could do nothing but convict him. Had he stated to the magistrate that he returned for the purpose of working, it would have been a question for the Court, whether the magistrate should not have used the language of this court in the case of *Rex* v. *Fillongley*. Judgment for the defendant. *Returning after removal.*

Information of an Overseer against a person returning from a Parish to which removed by an Order. See stat. 5 *Geo.* 4. *c.* 83. § 3. tit. Vagrants.

County of Devon. } *THE information and complaint of* A. J. *one of the overseers of the poor of the parish of* A. *in the said county, made upon oath before me* J. P. *esquire, one of his majesty's justices of the peace in and for the said county this* ——— *day of* ——— *in the year of our Lord one thousand eight hundred and* ——— *who saith that* A. O. *by an order under the hands and seals of* J. P. *and* K. P *esquires, two of his majesty's justices of the peace in and for the said county the* ——— *day of* ——— *was, on the day of* ——— *last, removed from and out of the said parish of* A. *in the said county of* - *to which said parish he the said* A. O. *was actually chargeable, to the parish of* B. *in the county of* Wilts, *the place of his last legal settlement, against which order of removal no appeal was made to the next quarter sessions of the peace for the said county of* Devon, *and that the said* A. O., *hath unlawfully returned from the said parish of* B. *to the said parish of* A., *from whence he was so legally removed by order of two justices as aforesaid, in which said parish of* A. *he is now resident, and hath become chargeable, and has not gained any settlement there, nor produced any certificate owning him to be settled elsewhere, wherefore he the said* A. J. *prays that justice may be done in the premises.*

Before me *A. J.*
J. P. Overseer of the poor of *A.*

Commitment for returning to a Parish after having been removed by order of two Justices.

County of Devon. } To the Constable of *A.* in the said County, and to the Keeper of the House of Correction at *Exeter* in the County aforesaid.

WHEREAS A. O. *was this day duly convicted before me* J. P. *esquire, one of his majesty's justices assigned to keep the peace of our said lord the king, in and for the said county of* Devon, *of being an idle and disorderly person, within the true intent and meaning of the statute in such case made and provided, for that the said* A. O. *by an order under the hands and seals of* J. P. *and* K. P. *esquires, two of his majesty's justices of the peace in and for the said county, dated the* ——— *day of* ——— *was on the* ——— *day of* ——— *last, removed from and out of the said parish of* A. *in the said county of* Devon, *where he was actually chargeable, to the parish of* B. *in the county of* Wilts, *the place of his last legal*

settlement, against which said order of removal no appeal was made to the then next quarter sessions of the peace for the said county of Devon, *and that he the said* A. O. *hath unlawfully returned from the said parish of* B. *to the said parish of* A. *from whence he was so legally removed by order of two justices as aforesaid, and is there become chargeable without bringing a certificate from the parish whereunto he belongs, of which he is duly convicted as aforesaid before me the said justice, upon the oath of* A. J. *one of the overseers of the poor of the said parish of* A. *a credible witness,* as also upon the confession of the said *A. O.* [*The words in roman may be omitted if the fact be not confessed.*] *These are therefore to command you the said constable to carry the said* A. O. *to the said house of correction, and him to deliver to the keeper thereof, together with this warrant. And I do hereby command you the said keeper to receive the said* A. O. *into your custody in the said house of correction, and him there safely to keep to hard labour for the space of* [say one month, or not less than seven days as the case may be.] *And for so doing this shall be your sufficient warrant. Given under my hand seal at* ——— *in the said county of* Devon, *this* ——— *day of* ——— *one thousand eight hundred and* ———.

4. Removal of a Certificate Person and Reimbursement of Overseers.

By stat. 8 & 9 *W.* 3. *c.* 30. The delivery of the certificate, and its form and extent are provided for: — which said statute, see *ante,* § XIV. tit. Acknowledgement of Settlement by Certificate.

3 G. 2. c. 29. Overseers to be reimbursed on reconveying certificate persons.

Stat. 3 *Geo.* 2. *c.* 29. § 9. Enacts, *that when any overseer or overseers of the poor of any parish or place, or other person, shall remove back any person or persons or their families residing in such parish or place, or sent thither by certificate, and becoming chargeable as aforesaid, to the parish or place to which such person or persons shall belong, such overseers or other persons shall be reimbursed such reasonable charges as they may have been put unto, in maintaining and removing such person or persons, by the churchwardens or overseers of the poor of the parish or place, to which such person or persons is or are removed, the said charges being first ascertained and allowed of by one or more of his majesty's justices of the peace for the county or place to which such removal shall be made; which said charges, so ascertained and allowed, shall, in case of refusal of payment, be levied by distress and sale of the goods and chattels of the churchwardens and overseers of the poor of the parish or place to which such certificate person or persons is or are removed by warrant or warrants under the hand and seal or hands and seals of such justice or justices, returning the overplus, if any there be; which warrant or warrants he or they are hereby required to grant.*

Form of an Order of Removal of a Certificate Person.

County of } To the Churchwardens and Overseers of the poor of the parish of *Orton* in the said county of *Westmorland,* and to the Churchwardens and Overseers of the poor of the parish of *Penrith* in the county of *Cumberland.*

WHEREAS complaint hath been made by the churchwardens and overseers of the poor of the parish of Orton *aforesaid, in the*

said county of ———, *unto us whose names are hereunto set, and seals affixed, being two of his Majesty's justices of the peace in and for the said county of* ———, *and one of us of the* quorum, *that* John Thomson, Mary *his wife,* Thomas *their son aged eight years, and* Agnes *their daughter aged four years, having for some time last past, dwelt in the parish of* —— *aforesaid, being allowed so to do by reason of a certificate, bearing date the* —— *day of* ——— *in the year of our Lord* ——— *under the hands and seals of* A. C. *and* B. C. *churchwardens, and* A. O. *and* B. O. *overseers of the poor of the said parish of* ———, *attested by* A. W. *and* B. W. *two credible witnesses, and allowed by* J. P. *and* K. P. *esquires, two of his majesty's justices of the peace for the said county of* ———, *according to the directions of the several acts of parliament in such case made and provided, are become chargeable to the said parish of* ——: *and whereas it appears to us, as well upon the oath of the said* John Thompson *as otherwise, that neither they, the said* John Thomson, Mary *his wife,* Thomas *and* Agnes *their children, nor any of them, have gained any legal settlement since the date of the said certificate: Whereby, and upon due consideration had of the premises, it appears to us, and we do hereby adjudge, that the said* John Thomson, Mary *his wife, and* Thomas *and* Agnes *their children, are become chargeable to the parish of* ———, *and that the place of the last legal settlement of them and every of them is in the said parish of* ——— *in the said county of* ———: *These are therefore to require you the said churchwardens and overseers of the poor of the said parish of* ——— *or some or one of you, to convey the said* John Thomson, Mary *his wife, and* Thomas *and* Agnes *their children, from and out of your said parish of* ———, *to the said parish of* ———, *and them to deliver to the churchwardens and overseers of the poor there, or to some or one of them, together with this our order, or a true copy thereof, at the same time shewing to them the original: And we do also hereby require you the said churchwardens and overseers of the poor of the said parish of* ———, *to receive and provide for them as inhabitants of your parish. And we do also hereby order and direct you the said churchwardens and overseers of the poor of the said parish of* ——— *to reimburse and pay unto the said churchwardens and overseers of the poor of the parish of* ——— *the sum of* ———, *being the amount of the reasonable charges that they the said churchwardens and overseers of the parish of* ——— *have been put unto in maintaining and removing the said* ——— *ascertained and allowed by us the said justices. Given under our hands and seals the* ——— *day of* ——— *in the year of our Lord* ———. 3 G. 2. c. 29.

It doth not appear what shall be done, if a certificate person, after having been removed shall return with a new certificate; that is, whether or no the parish shall be obliged to receive him again, until he shall again become chargeable. It sometimes happeneth, that a certificate person is decoyed into acceptance of relief from the parish officers, in order that they may get rid of him. If a new certificate shall entitle him to return, this kind of practice may be frustrated. Upon a removal, the certificate is at an end. But the parish may grant him another. And there is no law which seemeth to give power to any parish to refuse him. But this is a case not likely to happen frequently; because the

5 G. 2. c. 29. parish granting the certificate must pay the charges of removing such certificate-persons when chargeable, and of their maintenance in the mean time.

5. Appeal against the Order of Removal; and herein,

(a) *Who may appeal, and to what sessions, as to place.*
(b) *To what sessions the appeal shall be as to time;* and herein, *of the* next *sessions.*
(c) *Of adjournment.*
(d) *Of the notice of appeal, and how far the right of entering the appeal is affected by it.*

(a) Who may appeal, &c.

13 & 14 C. 2. c. 12. Power of appealing. Stat. 13 & 14 *C.* 2. *c.* 12. § 2. Enacts, *that all persons who think themselves aggrieved by any such judgment of the said two justices, may appeal to the justices of the peace of the said county at their next quarter sessions, who are hereby required to do them justice according to the merits of their cause.*

3 W. & M. c. 11. By stat. 3 W. & *M. c.* 11. § 10. which orders the churchwardens and overseers to receive paupers removed by orders of two justices, it is provided, "*that all such persons who think themselves aggrieved with any such judgment of the said two justices may appeal to the next general quarter sessions of the peace to be held for the county, riding, city, town-corporate or liberty, from which the said person was removed.*"

Appeal from justice of peace to quarter sessions, whose order shall be final. § 9. Provides and enacts, *that if any person or persons shall find him, her, or themselves aggrieved by any determination, which any justice or justices of the peace shall make in any of the cases abovesaid,* [viz. of adjudication of settlements] *the said person or persons shall have liberty to appeal to the next general quarter sessions of the peace, to be held for the said county, riding, or division, city, or town corporate, who upon full hearing of the said appeal, shall have full power finally to determine the same.*

Appeal against any order for removal of poor persons to be determined at the quarter-sessions. And by stat. 8 & 9 *W.* c. 30. § 6. *The appeal against any order for the removal of any poor person from out of any parish, township, or place, shall be had, prosecuted and determined, at the general or quarter sessions of the peace for the county, division, or riding, wherein the parish, township or place, from whence such poor person shall be removed, doth lie, and not elsewhere.*

Justices being interested. In this place it may be proper to take notice of the case of *Rex* v. *Yarpole, M.* 31 *Geo.*3. 4 *T. R.* 71. 2 *Bott,* 716. 2 *Nol. P. L.* 515. Where it was determined, that on an appeal to the sessions against an order of removal, those justices who are rated to the relief of the poor in either of the contending parishes have not a right to vote.

The pauper himself may appeal. *All persons who think themselves aggrieved.*] *Rex* v. *Hartfield, E.* 4 *W. Carth.* 222. 2 *Bott,* 716. 2 *Nol. P. L.* 488. Two justices remove *Nicholas Wells* from the parish of *Hartfield* to the parish of *Frampfield;* from which order, *Wells,* the party himself, and not the parish, appealed. It was objected, that the party himself cannot appeal, because the appeal is only given to the parish aggrieved.—But by the whole court: the party may appeal as well as the parish.

Rex v. *Almanbury*, *T.* 4 *Geo.* 1. 1 *Stra.* 96. 2 *Bott*, 717. 2 *Nol. P. L.* 469. *3d ed.* An order of two justices was quashed at the sessions upon appeal, without saying, *at the appeal of the party grieved.* And the court inclined to quash the order for this fault, till they were informed the precedents were most of them so, and for that reason, and that only, as *Pratt* C. J. declared, the order was confirmed.

For the county, division, or riding, from whence the removal was.]

Appeal must be to the sessions of the county, and not of a corporation:

Rex v. *Wendover*, *E.* 13 *W.* 2 *Salk.* 490. 2 *Bott*, 722. 2 *Nol. P. L.* 494. Two justices of *St. Alban's* remove a poor person to *Wendover*. *Wendover* appeals to the sessions of *St. Alban's*, where the order was confirmed. — By the Court: the appeal ought to have been to the sessions of the county, and not of the corporation; and as it was, it was *coram non judice*

In the case of *Rex* v. *Malden*, *M.* 11 *Ann.* *Sett.* & *Rem.* 10. 2 *Bott*, 725. *n.* 2 *Nol. P. L.* 495, 496.—By Ld. *Parker* C. J. Where there is a town corporate that hath sessions of its own, and the justices within that town make an order there, if the parties will appeal they must appeal to the county sessions, and not to their own sessions, for then there would be an appeal *ab eodem ad eundem*, there being, it may be, the same justices sitting who made the order.

Or borough.

Rex v. *East Donyland*, *T.* 8 *Geo.* 3. *Burr. S. C.* 592. 2 *Bott.* 724. 2 *Nol. P. L.* 496. Two justices for the borough of *Colchester* removed the pauper from *St. Giles's* in *Colchester* to *East Donyland* in *Essex*; and on appeal to the quarter sessions of the borough, the justices there confirm the order, and state a special case for the opinion of the court of king's bench. Upon arguing the matter there, it was observed, that the appeal ought to have been to the county sessions. Unto which it was answered, that the parties having acquiesced in the jurisdiction, and entered upon the merits, and actually settled a case for the opinion of the court, they were not at liberty now to make the objection. — But by the Court: The borough sessions had no jurisdiction to make this order of confirmation, and therefore their opinion and their order are both nugatory. The appeal ought to have been to the quarter sessions of the county. As no such appeal has ever been made, the original order stands good as unappealed from. And accordingly the original order was confirmed.

Where by charter the magistrates of a borough, which was a county of itself, held only general sessions twice a-year, and not quarter sessions: Held, that an appeal against an order of removal might be made to the next general sessions of the peace for such borough.

Rex v. *The Justices of the Borough of Carmarthen, and County of the same Borough*, *H.* 1 & 2 *Geo.* 4. 4 *B.* & *A.* 291. 2 *Nol. P. L.* 493. Two justices of the borough of *Carmarthen*, on the 23d *May*, 1820, by their order, removed a pauper from the parish of *St. Peter* in that borough, to the parish of *New Church* in the county of *Carmarthen*. Against this order the parish of *New Church* appealed, and in their notice of appeal, stated their intention of appealing to the next quarter sessions of the borough of *Carmarthen*. At the next sessions (which, it appeared, were the general and not the quarter sessions) for the borough, held on the 21st *September* last, the parties accordingly attended and applied for leave to lodge the appeal; but the magistrates refused the application. In *Michaelmas* term 1820, a rule *nisi* was obtained for a *mandamus* to the magistrates to hear the appeal. It appeared, from the affidavits, that the borough of *Carmarthen* was a county of itself, and that, by

R. v. Carmarthen.

the charter, there were annually elected therein, six persons, called the six peers of the borough; who, with the mayor and recorder, were magistrates of the borough, and had the power, twice in a year, to hold a court of view of frank-pledge, and to summon the sessions of the peace within the borough, and to hold the sessions of the peace there, and to do and execute all things relating to the sessions of the peace, according to the custom of *England;* and that in the said court of view of frank-pledge and sessions they had full power and authority to hear, execute, and determine upon all articles, misprisions, trespasses, and offences within the borough, which, according to law, belong to the court of view of frank-pledge, or to the office of justices of the peace in their quarter sessions, or otherwise to execute and determine. It also appeared, that the parish of *St. Peter* was co-extensive with the borough; but that three out of the eight magistrates did not reside in the parish. On behalf of the magistrates, it was stated that they were willing to proceed, in case the court thought they had a jurisdiction over appeals against orders of removal. On behalf of the removing parish it was argued, that there is nothing in the charter of the borough enabling the magistrate to do acts relating to the poor laws at their general sessions. Lord *Hale* lays it down that a general sessions is perfectly distinct from a quarter sessions. By 13 & 14 *Car.* 2. *c.* 12. § 2., the appeal was given to the quarter sessions against orders of removal. But by 8 & 9 *W.* 3. *c.* 30. § 6., the phrase was altered to "general or quarter sessions." These two acts are, however, in *pari materiâ*, and should receive a similar construction. *Rex* v. *The Justices of London* (15 *East*, 632.) Here, too, there are only three justices who can sit to determine this appeal. For, by 16 *G.* 2. *c.* 18., all the rest are disqualified. And by stat. 17 *G.* 2. *c.* 38., it was provided, that in limited jurisdictions, where there are not four magistrates, the appeal must be to the county sessions.—The counsel (*contrà*), was stopped by the Court, when *Abbott* C. J. said, I am of opinion that the true construction of the 8 & 9 *W.* 3. *c.* 30. is, that if there be an appeal to the sessions of a town which is a county of itself, where, by charter only, general sessions are held, it must be made to the general sessions. Here the magistrates are empowered to hear and determine upon all articles within the borough, which, according to law, belong to the office of justices of the peace in their quarter sessions, or otherwise, to determine. Now this is a very large expression, and comprehends, as it seems to me, a power to decide upon orders of removal. As to the other objection, it appears that there are three magistrates at least, qualified to act, and a sessions, of the peace may, it is known, be held before two magistrates. The act of parliament, to which a reference has been made, only applies to corporations or franchises, where there are not more than four justices altogether; and besides, it does not apply to appeals against orders of removal. Upon the whole, therefore, I am of opinion that this rule ought to be made absolute. See *Rex* v. *Justices of Essex*, *ante*.

(b) To what Sessions the Appeal shall be, as to time; and what are the next Sessions.

At the next general or quarter sessions.] *Rex* v. *Norton*, *E.* 2 *Geo.* 2. 2 *Stra.* 831. 2 *Bott*, 723. 2 *Nol. P. L.* 499. Exception was taken to an order of sessions, for discharging an order of removal, because the justices' order was dated *June* 21st, and the sessions' order was not till *Michaelmas* sessions following, so that *Midsummer* sessions intervened. To this it was answered, that by the express words of the statute the appeal is to be to the next sessions after the parties find themselves aggrieved, which is not till the removal; and for aught appears *Michaelmas* sessions might be the next sessions after the aggrievance. And so it was held in the case of *Milbrooke* v. *St. John's* in *Southampton*, *M.* 1 *Geo.* 1. To which the court agreed, and the sessions, order was confirmed.

To be the next sessions after the removal.

Parties not aggrieved till after the removal.

Rex v. *the Justices of Devonshire*, *T.* 17 *Geo.* 3. *Cald.* 32. 2 *Bott*, 726. 2 *Nol. P. L.* 511. 514. A *mandamus* had been moved for to the justices of *Devon*, to hear an appeal to an order of removal of *John Cook* and his wife and children, from *Witheridge* to *Paddington*, both in the county of *Devon*: the justices at the sessions had refused to enter into it, as one sessions had intervened since the removal. The facts were, that the order of removal was dated *October* 21st, 1776; in *November* the pauper was removed; some time afterwards it was agreed between the two parishes, that the question should be decided by the opinion of *Heath* serjeant, provided such opinion was given on or before the 14th day of *January*, the sessions beginning on the 15th. It was also agreed, that no other instructions should be given to the counsel, than the examination of the pauper, which was, That he was born in the parish of *Witheridge*, and about the age of seven years was bound to *Richard Elworthy* of *Witheridge*, with whom he lived till twenty-one, and then made an agreement with his master to give him one guinea to discharge him from his apprenticeship; that the said *Elworthy* gave him a discharge under his own hand: that after different services he gained a settlement by hiring and service under *Robert Salter*, in the parish of *Paddington*, if he was so far discharged by the above transaction as to be capable of gaining a settlement by hiring and service. — On the 10th of *January* the opinion was given; and was, "That if the indenture of apprenticeship remained in the master's hands *uncancelled*, the apprenticeship still continued, and the agreement was no dissolution thereof, but only a licence to the apprentice to serve where he pleased." *On this day* the officers of *Witheridge* told the officers of *Paddington*, that as the opinion was not decisive, they must inquire of the master what had become of the indenture. At the sessions on the 15th, no appeal to the order of removal was entered. At *Easter* sessions following, the parish of *Paddington* appealed, but the justices refused to enter into it, as not being in time. — Early in the term a *mandamus* was moved for on the ground that, under the agreement, the opinion in favour of *Paddington* was conclusive, and that *Paddington* had appealed in consequence of objections raised to this decision *subsequent to the Epiphany Sessions*, and therefore the statutable limitation of appeal to the

Time limited for appeal, how far affected by referring the matter to arbitration.

Of the sessions at which an appeal must be made against an order of removal.

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next sessions ought, during the time the parties were under the terms of compromise to be suspended: On the last day of term, cause was shewn, and the court being satisfied upon the fact, of the appeal having been prevented in consequence of the objection not having been raised *previous to the Epiphany Sessions.* — By Ld. *Mansfield* C. J. As both parties had agreed that this question should be submitted to counsel, and that his opinion should conclude, though the court does not quite agree with the counsel in point of law, they would not, had the opinion been positive, have granted the *mandamus*. Upon the point of law, I am of opinion, that if the indenture had not been destroyed, but remained in the master's hands, the apprentice would yet have gained a subsequent settlement in *Paddington:* The master received a guinea of his apprentice, then of full age, for the express purpose of vacating the indenture: Why, could the master after this, have used the indenture against the apprentice? So far from it, that the apprentice might have brought an action against the master for it. But the opinion of the counsel was hypothetical only, and upon a state of facts at the time not settled and submitted to him by the parties; the case therefore might be considered as open to the interposition of the court. But the merits of the case appearing to be clearly against the party applying, the court, to prevent further litigation and expense, refused the rule; and on account of some misconduct with respect to the affidavits laid before the court, by the prosecutors of the rule, directed that it should be discharged, with costs out of pocket. *Mandamus refused.*

By *next* sessions is meant the *next possible* sessions.

And in *Rex* v. *the Justices of the East Riding* of *Yorkshire*, *E.* 19 *Geo.* 3. *Doug.* 192. 2 *Bott*, 727. 2 *Nol. P. L.* 509. A *mandamus* to receive an appeal against an order of removal was moved for on the following facts: The order of removal had been made by the two justices on the 22d of *September*, but the pauper was not removed till the 5th of *October*. *Hull*, the place to which the pauper had been removed, from *Whitby*, is sixty miles from *Northallerton*, where the sessions began on the 6th of *October*. At which sessions no appeal was entered. And at the *Epiphany* sessions following, which began on the 12th of *January*, *Hull* offered an appeal, but the justices refused to hear it, thinking themselves bound by the words of the statute, which directs the appeal to be to the *next* sessions. On shewing cause it was insisted, that the succeeding sessions had no jurisdiction; that an appeal might have been entered at the *Michaelmas* sessions, on the second or third day, for that no notice is necessary in order to entitle the parties to *enter* their appeal, although if there has been no notice, or not reasonable notice, the justices are bound to adjourn the hearing till the ensuing sessions. — The Court said, that by *next* sessions the statute meant the next *possible* sessions, and that here it was impossible for the appellants to lodge their appeal at the *Michaelmas* sessions. And the rule was made absolute for a *mandamus*.

Where two days intervene between the removal and the next sessions, the appeal

Rex v. *Justices of Herefordshire*, *M.* 30 *Geo.* 3. 3 *T. R.* 504. 2 *Bott*, 727. 2 *Nol. P. L.* 496. 507. A rule had been obtained, calling on the defendants, to shew cause why a *mandamus* should not issue, commanding them to receive an appeal against an order of removal. The order was made on *Friday* the 18th of *April*;

on the 19th the pauper was removed; and on the *Tuesday* following, the 22nd, the *Easter* sessions was held at *Hereford*, 20 miles distant from the parish to which the pauper was removed; at which sessions it is the practice not to receive any appeal after the *Tuesday* morning. The parish not having appealed at those *Easter* sessions, the justices at the *Midsummer* sessions refused to receive the appeal, because not made at the *next* quarter sessions, according to the 13 & 14 *C.* 2. *c.* 12. § 2. The foundation of this application was, that as the officers of the parish to which the pauper was removed, had not sufficient time to convene a meeting of the inhabitants, in order to take their opinion upon the subject, whether there were any grounds for the appeal, the *Midsummer* sessions were the next *possible* sessions. — Ld. *Kenyon* C. J. The words of the act of parliament are very strong; and they require the appeal to be made at the sessions next after the grievance. Where indeed an order of removal has been made some time before, and only executed a very short time before the sessions, so that there was no possibility of appealing to those sessions, this court has interfered by granting a *mandamus* to compel the justices at the following sessions to receive the appeal; because the words "next sessions" mean "the next *possible* sessions." But this is a very different case; for there were two intervening days after the execution of the order, and before the *Easter* sessions; and if there were not sufficient time before those sessions, to give reasonable notice of appeal, the appeal might have been then entered and adjourned, according to 9 *Geo.* 3. *c.* 7. § 8. The other judges concurring, — Rule discharged.

Of the sessions at which an appeal must be made against an order of removal.

ought to be entered at that

Rex v. *The Justices of Surrey*, *E.* 53 *Geo.* 3. 1 *M.* & *S.* 479. *Bott*, *Cont.* 7. 2 *Nol. P. L.* 510. This was a rule for a *mandamus* to the justices of *Surrey*, commanding them to receive an appeal against an order of two justices, removing *George Kellaway* and his family from *Richmond* to *Mortlake*. The rule was obtained on the affidavit of one of the parish officers of *Mortlake*, which stated that the order of removal was dated on the 11th of *January* last, and was executed in the afternoon of that day. That the quarter sessions for the county of *Surrey* began on the 12th, and that there was not sufficient time to procure any information respecting *Kellaway's* settlement, or the requisite evidence to support an appeal, or even to ascertain whether such appeal ought to be made. That according to the practice of the sessions for that county, notice must be served on the respondent parish by the appellant, of their intention to *try* such appeal, at least six clear days before the commencement of the sessions; that due notice having been given for the *Easter* sessions, the appeal was then entered; but the Court refused to hear the appeal, on the ground that it ought to have been *entered* at the *Epiphany* sessions, and respited until the next sessions. Against the rule an affidavit was made by *C. J. Lawson*, esq., clerk of the peace, which stated that by the course and practice of the quarter sessions for that county, they are always adjourned for a certain time, and appeals against orders of removal are allowed to be lodged at any time during the sitting of the sessions, or at the adjournment held next after the making such order, without requiring notice to be given to the respondents. And that the consideration of such appeal is thereupon adjourned to the next quarter sessions after those

An order of removal was made and executed the day before the Epiphany sessions, and an appeal entered and notice given for the Easter sessions:

On the sessions refusing to receive the appeal at the Easter sessions, a mandamus was granted.

R. v. Surrey.

at which it is so lodged. That the last *Epiphany* quarter sessions commenced on the 12th of *January*, and lasted fourteen days, when they were adjourned to the second of *February* following, (which adjournment lasted one day,) and again adjourned to the 1st of *March*, which lasted two days. It was stated also that *Newington*, where the *Epiphany* sessions were holden, was distant only eight miles from *Mortlake*. Against the rule was cited the case of *Rex* v. *The Justices of Herefordshire. Dougl.* 192. And in support of the rule was cited the case of *Rex* v. *The Justices of London*, 15 *East*, 632.—Lord *Ellenborough* C. J. The statute does not contemplate the continuance of the sessions. It enacts that the party may appeal "to the next quarter sessions," without adding "or some adjournment thereof." It takes the holding of the sessions as the point of time, to which it refers the appeal; and the sessions are always considered in law as one day, to whatever period they may by accidental causes be extended. The appellant parish ought to have a reasonable time allowed for considering whether they will appeal or not. The question is, whether the interval between the 11th and 12th of *January* was a reasonable time for that purpose. We are of opinion that it was not.—*Bayley* J. referred to *Rex* v. *Justices* of *Flintshire*, 7 *T. R.* 200.—Rule absolute.

Rex v. *The Justices of the West Riding of York*, *T.* 55 *Geo.* 3. 4 *M. & S.* 327. 2 *Nol. P.L.* 507. An order of removal from a township in the *West Riding* to the parish of *Saint Luke* in *Middlesex*, was dated on the 3d of *January*, and executed on the 12th, and the *Epiphany* sessions for the *West Riding* were holden on the 18th. The parish of *Saint Luke* did not appeal to those sessions, but offered to appeal at the *Easter* sessions in *April*, when the justices refused to receive the appeal. A rule *nisi* was obtained for a mandamus to the justices to receive the appeal, on the ground that the order was executed too near the time of the *Epiphany* sessions to make it practicable to appeal to them, considering the distance of the parish of *Saint Luke* from the place where those sessions were holden. After cause shewn, *Le Blanc* J. (in the absence of the Chief Justice,) said, We do not think that the parish were entitled strictly to pass over the first sessions; but if they had done at the second as much as they ought to have done, the Court would have relieved them. The parish might possibly have gone in the first instance to the *Epiphany* sessions, but they have not done this, and have also not placed themselves in a situation to be heard at the second sessions, the Court therefore do not see a sufficient ground for granting the mandamus. Rule discharged.

The next sessions means the next practicable sessions.

Rex v. *Justices of Essex*, *M.* 58 *Geo.* 3. 1 *B. & A.* 210. 2 *Nol. P. L.* 505. A rule had been obtained on a former day, calling upon the defendants to shew cause why a *mandamus* should not issue, commanding them to receive and hear an appeal against an order of removal by which a pauper was removed from the parish of *Tolleshunt Knights*, in the county of *Essex*, the parish of *Washbrook*, in the county of *Suffolk*. Upon shewing cause against the above rule, the following facts appeared upon the affidavits.—The order was made on *Tuesday* the 8th *July*, 1817, and was served about twelve o'clock on the following *Saturday*. The distance between the respondent and

Of the sessions at which an appeal must be made against an order of removal.

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appellant parishes was twenty-four miles, and the appellant parish was thirty-seven miles distant from *Chelmsford*, where the sessions were held on the *Tuesday* following, and lasted four days: and by the practice of that sessions a motion to enter and respite the appeal might have been made at any time during the sessions. The parish not having appealed at the *July* sessions, the justices refused to receive the appeal at the *Michaelmas* sessions, on the ground that that was not the next quarter sessions within the meaning of the stat. 13 & 14 *Car.* 2. *c.* 12. § 2. After cause shewn against the rule, Ld. *Ellenborough* C. J. said, The stat. 13 & 14 *Car.* 2. certainly directs the appeal to be at the *next* quarter sessions, but that must mean the next practicable sessions. The parish officers must have a reasonable time allowed them to make the necessary enquiries, that they may judge of the propriety of appealing or not. The notice here is served on the *Saturday*. I am of opinion that they are not bound to devote *Sunday* to such a purpose. They have then only one entire day, *i. e.* the *Monday*, to get the necessary information, and to consider whether they will appeal or not, and that in my judgment is not sufficient. It has been said that although the appeal could not have been heard at those sessions, still that it ought to have been entered and respited: but that would only be incurring an useless expense, without conferring any benefit on either party, and was therefore quite unnecessary. R. A.

(For more concerning the time for appeal, see this vol., *ante*, § II. (9.) p. 136, *et seq.*)

(c) Of Adjournment.

Adjourning an appeal for further consideration.

Rex v. *King's Langley*, *T.* 11 *W.* 3. 2 *Salk.* 605. *Comb.* 365. 2 *Nol. P. L.* 436. 3*d ed.* Upon an appeal against an order of *removal*, the justices adjourned the appeal for further consideration. And by the Court, they may well adjourn an appeal upon debate for further consideration.

Where justices are divided.

Bodmin v. *Warligen*, *M.* 23 *Geo.* 2. 2 *Bott*, 733. 2 *Nol. P. L.* 436. 446. 3*d ed.* On an appeal against an order of *removal*, the justices were divided, and the clerk of the peace made an entry that the appeal was lodged and nothing done in it. And the Court held, that under these circumstances the clerk of the peace ought to have entered an adjournment.

Style of the sessions where they are adjourned.

But where the sessions itself is adjourned, the style of the sessions ought not to run *at such a sessions held by adjournment*, but the time of the first meeting of the sessions ought to be set forth, and that the same was continued to such further time by adjournment: As in the case of

Rex v. *Hindercleave*, 19 *Vin. Abr.* 356. 2 *Bott*, 723. 2 *Nol. P. L.* 501. An order made at the general quarter sessions of the peace *held by adjournment* was quashed, because it did not appear that this was the next general quarter sessions; for it might be that the sessions was begun and continued by adjournment before the order was made.

Rex v. *Heptonstall*, *T.* 10 *Geo.* 2. *Burr. S. C.* 88. 2 *Bott*, 731. 2 *Nol. P. L.* 466. 3*d ed.* The sessions was said to be holden on such a day *by adjournment*, and it did not appear when the original sessions was holden. And the order was quashed for that cause.

Adjourning on appeal.

Rex v. *Polstead, H.* 20 *Geo.* 2. 2 *Stra.* 1263. 2 *Bott,* 732. 2 *Nol. P. L.* 414. 437. 3*d ed.* Appeal was made to the quarter sessions in *Suffolk,* held *April* 7. 1746, against an order of removal. The sessions was adjourned to *April* 9th, at *Woodbridge,* where for want of a sufficient number of justices nothing could be done. *April* 11th, a sessions is held at *Ipswich,* and adjourned to the 14th at *Bury,* where the appeal was allowed. It was moved to quash the order of sessions, as made without jurisdiction, the sessions ending for want of an adjournment at *Woodbridge.* And of that opinion was the Court; for the words in stat. 2 *H.* 5. *c.* 4. *and more often if need be,* were never considered as giving more than one original sessions in a quarter, but only empowering adjournments. The county must take notice of adjournments, but are not supposed to expect a new sessions till the usual time. And the order of sessions was quashed. Vide Vol. V. p. 203. (*n.*) tit. Sessions.

There must be an adjournment from place to place, where the sessions are held at different places.

Rex v. *West Torrington, T.* 22 & 23 *Geo.* 2. *Burr. S. C.* 293. 2 *Bott,* 724. 2 *Nol. P. L.* 402. 437. 466. 3*d ed.* The sessions was held at *Kirton;* and from thence adjourned to *Caister,* at which place no sessions was held pursuant to the said adjournment. Afterwards a sessions was held at *Horncastle;* and the appeal was heard and determined there. — By the Court: The sessions at *Horncastle* could not take up the appeal, for want of jurisdiction. A quarter sessions must be holden four times in a year, as directed by the statute; and it may be adjourned from time to time, and from place to place: but if it is once dropped, it cannot be resumed.

Order confirmed at the sessions without hearing the appellants, quashed by Court of K. B.

Road v. *North Bradley, T.* 15 *Geo.* 2. 2 *Stra.* 1168. 2 *Bott,* 718. 2 *Nol. P.L.* 433. 3*d ed.* A person was removed from *Road* to *North Bradley. North Bradley* gave notice of appeal; on which *Road* took him back, but however got their order confirmed at sessions. The next sessions set both aside as fraudulent. And now *Road* insisted that the order was good, as not being appealed from at the next quarter sessions: and as to the other, that it was not in the power of one sessions to set aside the act of the other. All being now before the Court, they quashed the first order, as being properly quashable on appeal; and would not take notice, that it was not at the next sessions after service of the order, which being in the case of a recent appeal, they would suppose to have been served too late for an appeal to the next sessions. And as to the order of confirmation, they quashed that, as not being made on any appeal, and consequently without jurisdiction, and at the same time quashed the latter part of the second sessions order, which rescinded that confirmation, as not being properly before them.

(*d*) Of Notice of Appeal.

For notice of appeal, and time of appeal against an order of removal suspended, see *ante,* this sect. 2. (*i*), and stat. 49 *Geo.* 3. *c.* 124. § 2. p. 778.

9 G. 1. c. 7. Reasonable notice is to be given of appeals.

By stat. 9 *Geo.* 1. *c.* 7. § 8. *No appeal or appeals from any order or orders of removal of any poor person or persons whatsoever, from any parish or place to another, shall be proceeded upon in any court or quarter sessions, unless reasonable notice be given by the churchwardens or overseers of the poor of such parish or place, who shall make such appeal, unto the churchwardens*

or overseers of the poor of such parish or place from which such poor person or persons shall be removed; the reasonableness of which notice shall be determined by the justices of the peace at the quarter sessions to which the appeal is made; and if it shall appear to them that reasonable time of notice was not given, then they shall adjourn the said appeal to the next quarter sessions, and then and there finally hear and determine the same. *Adjourning an appeal.*

Reasonable notice.] *Rex* v. *J. of Huntingdonshire, E.* 23 *G.* 3. *Cald.* 283. 2 *Bott,* 719. 2 *Nol. P. L.* 518. 527. Upon a removal of a pauper by two justices, the notice of appeal was served upon a *Sunday:* had the appellants deferred the service of their notice till another day, they would not have been in time, under the practice established in that court, to have given reasonable notice for the purpose of *trying the merits* of the appeal. The sessions (being of opinion that the party aggrieved was not at any rate or for any purpose entitled to appeal, unless the prescribed notice had previously been given; and also, that a service of a notice on a *Sunday* was not a legal service, and that in point of law there had not been any notice) refused to hear, adjourn, or enter the appeal.—A rule was obtained to shew cause why a *mandamus* should not issue, directing the justices to receive and hear the appeal; and no cause being shewn, the rule was made absolute. Sessions are bound to receive an appeal although no notice has been given.

Rex v. *the J. of Gloucestershire, E.* 19 *Geo.* 3. *Doug.* 191. 2 *Bott,* 727. 2 *Nol. P. L.* 519. On a motion for a *mandamus* to compel the justices of the quarter sessions of *Gloucestershire* to receive an appeal against an order of removal; it appeared from the affidavits, that the examination of the pauper was taken in *August;* the order of removal the 12th of *November* following; and the sessions where the appeal was tendered, held on the 12th of *January* in the ensuing year; that *no notice* of appeal had been served (for which the reason assigned was, that the appellants had not been able to get their witnesses ready till it was too late to give such notice); that the Court had been moved to receive the appeal, and adjourn the consideration of it till the following sessions, and had refused.—The Court was clearly of opinion, that the justices ought to have received the appeal, and the rule for a *mandamus* was made absolute.

Rex v. *J. of the North Riding of Yorkshire. E.* 29 *Geo.* 3. 3 *T. R.* 150. 2 *Bott,* 720. 2 *Nol. P. L.* 518. 520. This was a rule calling on the defendants to shew cause why a *mandamus* should not issue, directing them to receive, hear, and determine an appeal of the inhabitants of *Gate Helmsley* against an order of removal from *Strensall Gate* to *Helmsley,* both in the said riding. The order was made on the 26th *November,* and executed on the 28th. It appeared that the appellants attended the next sessions held on the 13th *January,* and moved the court for leave *to lodge the appeal and to respite the hearing thereof* to the next sessions. The following entry was made by the sessions: "Forasmuch as it appears to this Court that there has been sufficient time since the removal of the paupers for the appellants to give notice and come prepared to try this appeal at this sessions, and no cause shewn why they did not proceed accordingly, it is ordered, *that the motion for lodging the same, and respiting the hearing to the next quarter sessions, be rejected.*" The *Court* were of opinion, that the Unless they think the appellants had sufficient time to have given notice, and had neglected.

Notice of appeal.

R. v. Yorkshire

justices had not acted wrong; for the motion was in effect to adjourn the appeal. And it was evidently the intention of the parties not to enter the appeal unless the court would adjourn it. *The justices are to judge of the reasonableness of the time;* and in some counties they establish a rule regulating the time of notice. Here it appears, that the order of removal was executed on the 28th of *November;* so that there was sufficient time for the appellants to give notice, and to come prepared to try it; and the justices, who are the judges of this, thought so. — Rule discharged.

But in *Rex* v. *Justices of Bucks, H.* 43 *Geo.* 3. 3 *East,* 343. 2 *Bott,* 720. 2 *Nol. P.L.* 521. It was determined, that where notice had been given, and if, upon an appeal lodged against the order of removal, the sessions were of opinion that reasonable notice had not been given by the appellant to the respondents' parish, they could not dismiss the appeal* on the ground that notice might have been given in time, but were bound by the direction of the stat. 9 *Geo.* 1. *c.* 7. § 8., to adjourn the appeal to the next sessions.

It is imperative upon the sessions, to enter and adjourn the appeal, where no notice has been given to the respondents.

Rex v. *J. of Shropshire* (sometimes erroneously reported *Rex* v. *J. of Staffordshire*), *T.* 46 *Geo.* 3. 7 *East,* 549. 2 *Nol. P.L.* 521. An appeal was lodged at the next sessions after an order of removal made, and was moved to be adjourned, on the part of the appellants; no notice having been given to the respondents; but the sessions, being of opinion there had been sufficient time for the appellants to have given notice such after the order had been executed, and before the holding of the sessions, dismissed the appeal. Whereupon, a rule was obtained, calling upon the defendants to shew cause why a *mandamus* should not issue to them, commanding them to receive and enter a continuance on the said appeal, to the next general quarter sessions, and there hear and determine the matter of the said appeal. — Afterwards there was, on the part of the defendants, no opposition to making the rule absolute; they considering that the case of *Rex* v. *the J. of the North Riding of Yorkshire* had been over-ruled in the subsequent case of *Rex* v. *J. of Bucks* (*both ante.*) — And Ld. *Ellenborough* C.J. said, that the latter case had been well considered, and that the Court were satisfied that the statute was compulsory on the sessions in these cases to receive and adjourn the appeal. Rule absolute.

The sessions have power to judge of the reasonableness of the notice; and if they be wrong, the Court of K. B. will interfere.

Rex v. *J. of Wiltshire, M.* 49 *Geo.* 3. 10 *East,* 404. *Bott, Cont.* 5. 2 *Nol. P. L.* 508. 513. 515. This was a rule calling upon the defendants to shew cause why a writ of *mandamus* should not issue, commanding them to enter continuances upon the appeal of the inhabitants of *Stourton* in *Wiltshire,* against an order of removal from *Mere* to *S.,* and to hear and determine the said appeal. — This was founded on an affidavit of the appellants' attorney, living at *Wincaunton* in *Somerset,* by which it appeared that he was applied to by the parish officers of *S.* on the 19th of *April* last, to enter the appeal and get it respited until the next sessions, in consequence of which, notice of appeal and of the intended motion to respite was given to the respondents. That the next sessions was held on the 26th of *April,* when the appeal was entered and respited to the *Midsummer* sessions, which was held at *Warminster* on the 12th of *July;* that on the 2d of *July* the appellants' attorney learnt for the first time that

the sessions had made certain rules for their practice, which were not published till after the *April* sessions, nor acted upon or officially circulated till the *Midsummer* sessions, by which it was required, that on all trials of appeals, the notice of trial was to be given on or before the *Monday* in the week next before the sessions, otherwise the notice to be deemed insufficient, *and that the like notice was to be given in the case of respited appeals, unless, &c.* — That on *Tuesday* the 5th of *July*, notice of trial of the appeal was served on the respondents at six o'clock in the morning, dated the day before, being as soon as the signatures of the parish officers could be obtained. That the usual notice theretofore required in such cases in this and the nighbouring counties was given in this Case. That the appellants' attorney attended the *Midsummer* sessions on *Tuesday* the 12th of *July*, and on the next day the appeal was called on, when the respondents objected that the notice had not been given in time. That the appellants then applied to the Court for an adjournment under the circumstances, offering to pay the costs of the day; but the Court refused it, thinking they had no power to do so. — Affidavits were also read in answer to this rule, alleging that the new order of practice was made at the preceding *January* sessions held at *Devises;* and that notice of it was immediately after promulgated in the county. That the appellants' attorney lived only five miles from *S.*, though in the county of *Somerset;* and that the litigating parishes were very near to each other. — Lord *Ellenborough* C. J. The magistrates certainly had a discretion to exercise with respect to what was reasonable time for giving the notice of appeal; but we have also a kind of visitatorial jurisdiction over them in the exercise of such a discretionary power; and we think that in this case they have not exercised that discretion in a way that we ought to give effect to; but that we ought to interfere and correct it. Here it appeared that a new rule of practice with respect to giving notice had been recently made by the sessions, of which the appellants' attorney had no knowledge, but he conformed himself to the former practice; and, under these circumstances, it would be too much to conclude the appellants from having their case heard. — Rule absolute. [Though by stat. 13 & 14 *C.* 2, *c.* 12., the appeal was to be lodged at the *next* quarter sessions, yet when it was so lodged, the justices might have adjourned it *toties quoties* the purpose of justices required. — *Vide* the case of *Rex* v. *Lumley* parish, 2 *Salk.* 605. And there is nothing in the 9 *Geo.* 1. to restrain their general power in this respect, but rather to compel the adjournment if the first notice has not been given. *Vide Rex* v. *J. of Bucks*, and *Rex* v. *J. of Shropshire.*] (Mr. *East's* note.)

Notice of appeal.

R. v. Wiltshire.

Although it is not expressed in the act, that this notice shall be in writing, the Court will better judge of the reasonableness of it, if it shall be in writing; And it may be thus;

To the Churchwardens and Overseers of the poor of the parish of ——— in the county of ———,

Notice of appeal.

THIS is to give notice to you, and every of you, that we the churchwardens and overseers of the poor of the parish of ———

Notice of appeal.

in the county of —— do intend at the next quarter sessions of the peace to be holden for the said county of —— to commence and prosecute an appeal against an order of J. P. *and* K. P. *esquires, two of his majesty's justices of the peace of the said county of —— for and concerning the removal of —— from your said parish of —— to our said parish of ——. Witness our hands this —— day of ——.*

A. B. } *C. D.* } Churchwardens.
E. F. } *G. H.* } Overseers of the poor.

6. Of the Effect of an Order of Removal, unappealed against; and herein,

(*a*) *How far it is final.*
(*b*) *Of what facts it is conclusive.*

(*a*) How far an Order of Removal unappealed against is final.

Order not appealed against is final; and there can be no second order reversing the first, excepting by appeal.

Malendine v. *Hunsdon*, *H.* 12 *Ann.* *Fol.* 273. Two justices by an order send some poor persons to *Hunsdon*. Two justices there by an order send them back again. — By the Court: They ought to have appealed, and not sent them back; and held the order of the first two justices to be good, because there was no appeal against it.

Chalbury v. *Chipping Farringdon*, *T.* 12 *W.* 3. 2 *Salk.* 488. 2 *Bott*, 684. 2 *Nol. P. L.* 213. A person was removed, by order of two justices, from a parish in *Warwickshire* to *Chalbury* in *Oxfordshire*, from thence, by order of two justices, to *Chipping Farringdon* in *Berkshire*: It was objected, That *Chalburry* ought to have appealed, and got the order upon them discharged; to which *Holt* C. J. agreed: for sending the man to another place is falsifying the first order, which cannot be done but by appeal; for the order of two justices is a determination of the right against all persons, till it be reversed. *Chalbury* should have appealed from the *Warwickshire* order, and got that set aside, and sent the man back thither; and the justices there should have sent him to *Chipping Farringdon*. Therefore the latter order was naught.

The original order is, when unappealed from, conclusive.

Rex v. *Leverington*, *T.* 21 & 22 *Geo.* 2. *Burr. S. C.* 276. 2 *Bott*, 715. 2 *Nol. P. L.* 213. Removal from *Sutton St. Mary's* to *Leverington*: and no appeal: and the sessions confirmed the original order, though not appealed from. Four months after the first order, a second original order was made to remove the pauper from *Leverington* to *Sutton St. Nicholas*; which second original order was confirmed by the sessions upon appeal. — By the Court: The second original order, and the order of sessions confirming it, were quashed, and the first original order was confirmed; for *L.* was bound by the first original order unappealed from, unless some subsequent settlement appears, and four months is not a sufficient distance of time, whereupon to ground a presumption of having acquired a new settlement. And the order of sessions, confirming the first original order, was quashed, as being a voluntary and extra-judicial

act of the sessions, to confirm an order which was not complained of. A resolution to the same effect in *Godalmin* v. *St. Michael's Winchester*, 13 *Geo.* 2, was mentioned by the Court. R. v. Leverington.

But in *Rex* v. *Swalcliffe*, *H.* 23 *Geo.* 3. *Cald.* 248. 2 *Bott*, 633. 2 *Nol. P. L.* 145. 212. *Thomas Hawkins* and *Mary* his wife were removed from the parish of *Swalcliffe* to the parish of *Stourton*. The sessions quashed the order, and stated specially: That the pauper was born at *Swalcliffe*; that in *January*, 1782, he was removed from *Swalcliffe* to *Ascott*, a large populous village, part of the parish of *Whichford*, and maintaining its poor in common with *Whichford*: *Ascott* did not appeal, and *Swalcliffe* filed the order at the *Epiphany* sessions, 1782, for safe custody. The pauper and his wife coming again into *Swalcliffe*, and not having acquired any subsequent settlement, *Swalcliffe* obtained the first mentioned order, and sent the paupers to *Stourton*, where he had gained a settlement by hiring and service. — It was contended, that the order of removal to *Ascott* being unappealed from, was, as to the pauper's settlement in the parish of *Whichford* as including *Ascott*, a conclusive judgment. In reply it was insisted, that though an order of removal unappealed from is conclusive when directed to a place to which a removal can legally be made, and where there is to be found some person legally authorized to appeal; yet that here were no officers to act: that to omit to do a thing which was impossible to be done, could not be conclusive upon any one: that *Whichford* could not in this case appeal; for not being parties, they were not entitled to be heard. — By Ld. *Mansfield* C. J. The removal to *Ascott* was in truth no removal at all; there was no reason for an appeal; it was a mere nullity. Order of sessions quashed, and the order of the two justices affirmed.

Except where the removal is to a place that does not maintain its own poor separately.

In *Rex* v. *Chilvers Coton*, *H.* 39 *Geo.* 3. 8 *T. R.* 178. 2 *Bott*, 635. 2 *Nol. P. L.* 142. 144. 213. 215. It was determined, that where the justices, making an order of removal, want jurisdiction, such order is a *nullity*, and not merely voidable but absolutely void, and that the parish to which it is directed may object to it at any distance of time, though never appealed against, and though acted under for twenty years.

Or where the justices making the order want jurisdiction.

Rex v. *Llanrhydd*, *H.* 10 *Geo.* 3. *Burr. S. C.* 658. 2 *Bott*, 686. 2 *Nol. P. L.* 144. 214. Two justices (Mr. *Middleton* and Mr. *Jones*) made an order of removal, in *May*, 1768, from *Llanrhydd* to *Ruthin*, and the paupers were delivered to the officers of *Ruthin*, who maintained them for a while; and for some time after, they were maintained at the joint expense of both parishes. And notice of appeal against the said order being served on the officers of *Llanrhydd*, by the officers of *Ruthin*, on the morning of the quarter-sessions, previous to the filing of the said appeal, the officers of *Llanrhydd* consented to take the paupers back to their custody, without giving the parishioners of *Ruthin* the trouble of appealing. Afterwards, in *January*, 1769, two justices (Mr. *Yale* and Mr. *Price*) removed the same paupers from *Llanrhydd* to *Denbigh*. And upon appeal, their settlement was found to be at *Denbigh*. But it appearing in evidence on the behalf of the parish of *Denbigh*, that the former order made by Mr. *Middleton* and Mr. *Jones* for removing them to *Ruthin*, had not been appealed against, the Court were of opinion, that the said order of

An order may be deserted and given up by consent, without appealing.

R. v. Llanrhydd.

removal from *Llanrhydd* to *Denbigh* ought to be quashed, and was quashed accordingly.—After argument, By Ld. *Mansfield* C. J.: That order was made in favour of *Llanrhydd*; *Llanrhydd* gave it up, and consented to take the paupers back, without giving *Ruthin* the trouble of appealing against it. May not a party give up a judgement intended for his own benefit? And the order of sessions was quashed, and the order for removing the paupers from *Llanrhydd* to *Denbigh* affirmed.

Removing parish may, by consent, abandon the order. A subsequent order to another parish held good.

Rex v. *Inhab. of Diddlebury*, *E.* 50 *Geo.* 3. 12 *East*, 359. *Bott, Cont.* 108. 2 *Nol. P. L.* 144. 214. By an order of removal, dated *August* 15th, 1809, *Mary Davies*, single woman with child, was removed from *Much Wenlock* to *Diddlebury*, both in the county of *Salop*. The sessions confirmed the order, subject, &c. — Case: Soon after the sessions in *July*, 1809, two justices by an order removed the said *Mary Davies* from *Much Wenlock* to *Long Stanton* parish, in the same county; by virtue of which order she was conveyed by the parish officers of *Much Wenlock*, and delivered by them, with the order, to the parish officers of *Long Stanton*, who received her accordingly, and maintained her there for five weeks, at the expence of *Long Stanton* parish. On the 15th of *August* following, doubts having been entertained whether the order made in *July* preceding could be supported by evidence, a meeting was had between the parish officers of *Much Wenlock* and *Long Stanton*, who finding the account given by other witnesses was different from that given by the pauper, on whose evidence the first order of removal to *Long Stanton* had been made, and being of opinion that it could not therefore be supported, they mutually agreed to cancel that order; which they accordingly did, with the consent of the magistrates who had made it, and who thereupon made another order, which is the order now appealed against, and which was made before any sessions had intervened, to which any appeal against the first order could be made. There was no appeal against the order of removal to *Long Stanton*. — When this case was called on, *Le Blanc* J. said, That the point had been expressly decided in the case of *Rex* v. *Llanrhydd*; and Ld. *Ellenborough* C. J. said, That the point was so clear upon principle, that it did not want any authority to support it.— Against the orders, *Chalbury* v. *Chipping Farringdon* was cited; and it was urged shortly, that however an order made might be abandoned before execution, it could not afterwards; and being in the nature of a judgment executed, it could only be reversed by appeal. — Ld. *Ellenborough* C. J. said, There are two ways of getting rid of an order; one by the consent of the parish in whose favour it is made, to abandon it; the other by waiting till the time of appeal, and appealing against it to the sessions, by whom it may be quashed, if not supported. Here the parish in whose favour it was made, finding upon further information, that they could not support it, very sensibly determined to abandon it at once, by consent, and acted accordingly. And what objection can there be, as Ld. *Mansfield* observed in the case mentioned, to a party's abandoning a judgment intended for his own benefit? In the case in *Salkeld*, there was no consent of the party in whose favour the order of justices was made to vacate. *Per Curiam*, Orders confirmed.

Entering of Appeal when Order executed and superseded.

Rex v. *The Justices of Norfolk, H.* 2 & 3 *G.* 4. 5 *B.* & *A.* 484. 2 *Nol. P. L.* 214. A rule *nisi* having been obtained in last *M. T.* for a *mandamus* to the defendants, commanding them to enter continuances, and hear the appeal of the churchwardens and overseers of the parish of *Little Hautboys with Lammas*, in *Norfolk*, against an order of two magistrates for removing *Hannah*, the wife of *Edward George*, (then a prisoner in the house of correction at *Aylsham* in that county, convicted of larceny,) and her family from the parish of *Repps with Bastwick* to *Little Hautboys with Lammas*. It appeared that the removal had taken place on the 22d of *August* last, and that on the 5th of *September* following notice of appeal was given. On the 10th of *October* a *supersedeas*, under the hands and seals of the removing magistrates, was served on the officers of the appellant parish, stating, that doubts had been entertained whether the order could be supported by legal evidence, and requiring them to deliver up the duplicate order to be cancelled, and also requiring the other party to take back the pauper. It appeared, that this was done at the instance of the respondents, the order of removal having been founded on the examination of *Edward George*, taken under stat. 59 *G.* 3. *c.* 12. § 28., and that he being a prisoner, convicted and under sentence for larceny, his examination was not evidence, he himself not being an admissible witness until the expiration of his sentence. It did not appear on the affidavits whether the costs of maintenance between the 22d of *August* and the 10th of *October*, had been paid or tendered by the respondents. On the 17th of *October*, application was made to the sessions for leave to enter the appeal, which was refused, the Court being of opinion, that the order was completely at an end. *On shewing cause against the rule*, it was contended, on the authority of *Rex* v. *Diddlebury*, (*ante*, p. 806.) that even after the execution of an order of removal, the justices may, with the consent of the respondents, supersede it, and the consent of the appellants is not necessary. *Contra*. The case of *Pancras* v. *Rumbold* (2 *Bott*, 631.) was relied upon. — *Bayley* J. This is a very different case from *Pancras* v. *Rumbold*, which is only an authority to shew that the justices having been surprised into making an order, may, of their own authority, and without the consent of the removing parish, supersede it before execution, but not after. But in this case, there is the consent of the removing parish. The language of Lord *Ellenborough*, in *Rex* v. *Diddlebury*, puts it upon that very ground, for he says, "there are two ways of getting rid of an order, one by consent of the parish in whose favour it is made to abandon it, the other by appeal;" and he adds afterwards, "what objection can there be, as Lord *Mansfield* observed, in the case of *Rex* v. *Llanrhydd*, (p. 806.) to a party's abandoning a judgment intended for his own benefit?" These observations shew that the consent of the removing parish alone is requisite. I think, that in cases like this, the sessions may exercise a discretion, and enter the appeal or not, so as best to answer the purposes of justice. If the parties removing do not chuse to pay the

Where an order of removal has been executed, and by consent of the removing parish and the magistrates making it, it is superseded, and the paupers taken back, it is in the discretion of the sessions to enter an appeal against it or not, according as they may think that justice requires it, in order to compel the respondents to pay the costs of maintenance, &c. incurred by the appellants before the order was superseded.

R. v. Norfolk.

expences of maintenance incurred, previously to the *supersedeas*, they may then enter the appeal, for the purpose of compelling them so to do. If they are willing to do it, the sessions may refuse to enter the appeal. Here the only object of entering it would be, either to obtain a decision from the sessions, in the absence of a material witness, or to respite the appeal from time to time. In the latter case there would be an useless expense entailed upon the parties. As soon as *George* is discharged from prison, a new order may be made; and it is better for the appellants that it should be so, for they will not be compelled to keep the family in the mean time. I think, therefore, that it was entirely in the discretion of the sessions to enter the appeal or not; and I do not see any ground why this court should interfere with their decision. This rule must therefore be discharged. — *Best* J. The principle upon which this court proceeds in issuing the writ of *mandamus* is to prevent a failure of justice. Here the very reverse would be the effect. For we should either compel the sessions to hear the case in the absence of the person who can give the most material information, or put the parties to the useless expense of obtaining respites from time to time, till his imprisonment be over. — R. D.

(*b*) Of what Facts it is conclusive when unappealed against.

An order of removal unappealed against, is conclusive of the facts stated in it.

Rex v. *Northfeatherton*, *E.* 5 *Geo.* 2. 1 *Sess. Ca.* 154. Two justices made an order, by which they removed a man, his wife, and four children, naming them, to *Featherton*; and there was no appeal. Afterwards *Featherton* found out that this woman was not the wife, for that the man though married to her, was married before to another woman, and consequently the second marriage totally void. And they removed the woman by her maiden name to *Horsington*, and the four children thither as bastards. *Horsington* appealed; and the sessions upon hearing the matter, stated specially, that this woman and the four children were the same with the woman and children removed by the first order, and gave judgement that the first order was conclusive, and thereupon quashed the said second order. — And by the Court: They have slipped their opportunity, and the first order not appealed against is conclusive.

If two be removed as man and wife, it is conclusive of that fact upon the parish removed to, if the order be not appealed against; and after-born children claiming settlement from the father and mother, are also concluded as to the fact of marriage.

Nympsfield v. *Woodchester*, *M.* 16 *Geo.* 2. 2 *Stra.* 1172. *Burr. S. C.* 191. 2 *Bott*, 685. 2 *Nol. P. L.* 143. In 1731 a man and his wife were removed from *Nympsfield* to *Woodchester*, and there was no appeal. They had afterwards returned to *Nympsfield*, and had there three children, who were now sent from *Nympsfield* to *Woodchester*, together with the father. And upon appeal as to the children, it was offered to give in evidence, that the man had a former wife, and consequently the children born at *Nympsfield* were as bastards settled there. The sessions refused to let *Woodchester* go into this evidence, being of opinion that *Woodchester* was concluded by the first order unappealed from, and that it made no difference that the children were born afterwards. — The Court, on debate, confirmed both orders: For the marriage being established by the first order, the settlement of the children (which is derivative) follows of course, and can no way be impeached, but by entering into the merits of the first order which hath been ac-

quiesced in. And nothing is more established, than that an order unappealed from is conclusive.

Same decision in *Rex* v. *Silchester*, *H.* 6 *Geo.* 3. *Burr. S. C.* 551. 2 *Bott*, 686. 2 *Nol. P. L.* 143.

So also, it is conclusive on all derivative settlements.

Rex v. *St. Mary Lambeth*, *E.* 36 *Geo.* 3. 6 *T. R.* 615. 2 *Bott*, 695. 2 *Nol. P. L.* 143. The pauper (with her three children) was removed as *Eliz.* the wife of *W. T.* from *St. Mary, Lambeth*, to *Huntspill*: and the sessions confirmed the order as far as related to *Eliz.*; but quashed it as to the children. And they stated specially, that the pauper *Eliz.* in 1784 was removed from *Stoke-under-Hampden* to *Huntspill*, with, and as the wife of a man to whom before that time she had been married; which order was unappealed from. The appellants offered to give in evidence, that the pauper *Eliz.* had been married to *W. T.* illegally, he then having a former wife, and which wife was still living; the children were born of the pauper *Eliz.* during her cohabitation with *W. T.*; and the Court said, that an order of removal unappealed against is conclusive, not only on the persons removed, but also on all derivative settlements from them. Order of sessions confirmed as to the wife, and quashed as to the children.

Order unappealed against, is only conclusive as to those who are mentioned in it, and removed.

Rex v. *Southowram*, *T.* 26 *Geo.* 3. 1 *T. R.* 353. 2 *Bott*, 691. 2 *Nol. P. L.* 144. *Elizabeth Booth*, widow, and her three children, were removed from *Southowram* to *Northowram*. On the appeal the sessions stated, that it appeared by the evidence of *William Booth*, (father of *Jeremiah*, late husband of the pauper,) that the said *William* and *Jeremiah* were born and settled at *Halifax*, but it did not appear that *J.* had done any act to gain a settlement; that on the 6th of *April*, 1774, the said *William Booth and his wife, but not any of their children*, were removed from *Halifax* to *Northowram*, who received the two paupers, and did not appeal. That *Jeremiah* and *Elizabeth* the pauper were married some years before the removal of *William* and his wife, and had those three children; and *J.*, from the time of his marriage until his death, lived at *H.* in a house he rented, independent of his father, and was not removed by or mentioned in the order, nor was then any part of his family. The sessions discharged the order, subject to the opinion of the Court, Whether the settlement of *E. B.* and the said three children was by inference to be deemed at *Halifax*, or to follow the settlement of the father to *Northowram*? By the Court: The order of removal unappealed from is conclusive as to the *father* and *mother*, but not as to the *son*, because he is not mentioned in it, and the sessions have expressly found, that the son was settled at *Halifax*. Order of sessions confirmed.

Where the pauper is removed by the name of *E. S.* widow.

Rex v. *Rudgeley*, *T.* 40 *Geo.* 3. 8 *T. R.* 620. 2 *Bott*, 697. 2 *Nol. P. L.* 143. Removal of *Emanuel Smith* and *Elizabeth* his wife, from *Acton Trussel* to *Rudgeley*, and confirmed by the sessions.—Case: In 1727, by a certificate to *Acton Trussell*, *Rudgeley* acknowledged the father of *Emanuel Smith*, and *Emanuel Smith* (the pauper) to be their parishioners: afterwards the son married the pauper *Elizabeth*. And in 1799, *Elizabeth Smith* was removed by the name and description of *Elizabeth Smith*, "widow," from *St. George, Hanover-Square*, to *Acton Trussell*; and against that order there was no appeal. And it was said in support of the order of sessions, that this was not a removal of *Emanuel Smith*,

R. v. Rudgeley.

nor of his wife, *as the wife* of *Emanuel Smith*, but simply of *Elizabeth Smith*, *widow*, and that therefore the parish of *Acton Trussell* had no notice of the ground on which the order of removal would be disputed. — But *Grose* J. said, that this order was conclusive as well as in the case of a removal of one *as wife*; for that this description imported that she was removed to a parish where her husband had gained a settlement, at least, it put that question in issue, and therefore it behoved the parish, to which the removal was made, to inquire how that settlement was gained. This would have been an object of inquiry on an appeal against that order; but as that parish did not then litigate the question, the Court were bound according to all the authorities to determine that the former order of removal is conclusive, and that not as to her only, but as to the husband likewise. And *Lawrence* J. agreed, and also said, that the description "*widow*" raised a presumption, that she was removed to the place where her husband was settled. — *Le Blanc* J. was of the same opinion, and said that the cases of *Rex* v. *Silchester*, and *Rex* v. *St. Mary, Lambeth*, shew that an order of removal unappealed from is conclusive, though the party be removed by a wrong addition; for in both those cases the woman was removed as the wife, though in fact she was not the wife; yet it was holden that the parties were precluded by the orders from disputing the settlements again upon subsequent removals. That the result of all the cases seemed to be this; an order of removal unappealed against is conclusive; an order of removal of a woman, though not as wife, is conclusive of the settlement of the husband, as well as the wife; and the circumstances of the party being removed under a wrong description does not take the case out of the general rule. Both orders quashed.

Order of removal of a woman, *as a wife* unappealed against, conclusive of the question of carriage.

Rex v. *Binegar*, *E.* 46 *Geo.* 3. 7 *East*, 377. 2 *Nol. P. L.* 143. 207. 219. 229. On appeal by the parish officers of *Binegar*, in *Somerset*, against an order removing *Elizabeth Savage*, otherwise *Walters*, by the name of *E. S.* single woman, from *Midsomer Norton* in the same county, to *Binegar*; the order was affirmed, subject, &c. — Case: On 25th *April*, 1793, by order of two justices made on the complaint of the parish officers of *Kilmersdon*, it was complained and adjudged as follows; *viz.* "That *John Savage*, labourer, and *Betty his wife* (the said *Betty* being the pauper removed), lately came and intruded themselves into the parish of *Kilmersdon*, endeavouring there to settle as inhabitants thereof, contrary to law, not having any way acquired a legal settlement therein, and are likely to become chargeable thereto, we do, upon due examination, adjudge the said complaint and premises to be true; and we do farther, *upon the examination of the said Betty*, the wife of the said *John Savage*, taken upon her oath, adjudge that the said *J. S.* and *B.* his wife, *were* last legally settled in the said parish of *Midsomer Norton*." The said *Betty* was removed from *K.* to *M. N.* and no appeal. On the 20th of *July*, 1799, by another order of two justices, made on the complaint of the parish officers of *Wellow* in the said county, it was complained and adjudged as follows; *viz.* "That *Elizabeth Savage* (the pauper), lately came to inhabit in the said parish of *Wellow*, &c., and that the said *Elizabeth Savage* is actually chargeable, &c.; we, &c. upon examination,

&c. and also upon the examination of the said *E. S.* upon, &c. do adjudge, &c. to be true, and we do adjudge that the place of the last lawful settlement of the said *E. S.* is in the said parish of *M. N.* And no appeal against this order. At *Lady-day*, 1803, the said *E. S.* hired herself and served a year with *J. B.* of *Binegar.* The said *John Savage* is still living. After she left this service she returned to *M. N.*, and became chargeable to that parish. In *May*, 1805, *J. S.* was committed to the house of correction for having run away and left the said *E.* therein called *his wife* so chargeable; after this he was at the sessions convicted of having so done, and was sentenced accordingly. The respondents produced evidence to the Court, that a marriage solemnized between the said *J. S.* and the said *E.*, before either of the said orders of removal were made, was a nullity, and the nullity of such marriage was not disputed. The question for the opinion of the Court was, Whether or not the respondents were estopped either by the former orders of removal, or by the adjudication of the said *J. S.* to be a vagrant for running away and leaving the said *Betty*, who is in such adjudication considered as *his wife*, from giving any evidence whatever to prove the said marriage a nullity. In support of the order of sessions, the second order, treating *Elizabeth Savage* as a single woman, was laid out of the case. And also the order of vagrancy was considered as an *ex parte* proceeding, and therefore not conclusive of the fact of marriage. And it was stated, that it did not appear that the parties ordered to be removed were within the jurisdiction of the removing magistrates; it only stated, that the paupers *lately* came into the parish of *K.* not that they were *then* in the parish at the time of the order made.—Ld. *Ellenborough* C. J. The order states, and the magistrates adjudge it to be true, that the paupers *are likely to become chargeable* to the parish, which could not be, if they were not in the parish at the time. Then it was urged that here was no adjudication of a *present* settlement, only that the paupers *were* last legally settled in *M. N.*—Ld. *Ellenborough* C. J. said, that it referred to the time of the complaint made, and the Court could not intend an intermediate settlement between the hearing of the complaint and the making of the order of removal. And the Court considered the first order of removal as good upon the face of it, and conclusive of the question of marriage, which was involved in the judgment of the justices. Orders quashed.

Pauper removed as the wife of A. B. *and no appeal.*

R. v. Binegar.

Rex v. *Kenilworth*, *T.* 28 *Geo.* 3. 2 *T. R.* 598. 2 *Bott*, 692. 2 *Nol. P. L.* 142. 146. *Thomas Byfield*, his wife and children, were removed from *Birmingham* to *Kenilworth* in *Warwickshire.* The sessions confirmed the order, and stated the following Case: That the pauper was born and settled in *Kenilworth.* On 10th *May*, 1765, he was hired for a year to *J. Chatterton*, of *Birmingham*, and that day entered into his said service, and continued in the same in *Birmingham* until 1st of *April*, 1766, when he was taken up on a charge of bastardy, and married the next day. His master did not make any complaint against him, nor discharge him from his said service. On the 3d of the said *April* he was removed from *Birmingham* to *Kenilworth*, where he remained until the 7th of *April*, and then returned back to *Birmingham* into his said master's service, who willingly received him again, and he continued in his said service till the end of the year, and

An order of removal unappealed against, is conclusive of the place of settlement up to that time.

Order of removal unappealed against; what parishes are concluded thereby.

R. v. Kenilworth,

received his full year's wages. The order of removal was not appealed against.— *Buller* J. There is no proposition in the law of settlements more clear than this, that *an order of removal unappealed against is conclusive against all the world;* and this is so clearly and universally established that it ought never to be impeached. At the same time the rule is, that the order of removal, though unappealed from, does not at all affect a subsequent settlement. After the order of removal, unappealed from, the pauper could not legally return to the parish from whence he had been removed: it would have been a crime in him to do so: and if he could not return without committing a crime, he could not be liable to an action by the master for not completing his contract. If the law intervenes and disables a person from completing his contract, it puts an end to the contract: In this case the pauper returned after the order of removal to the parish of *B.* where he served a month; but that could not gain him a settlement there, for the act subsequent to the order of removal, by which he was to gain a settlement, should be complete in itself.— *Grose* J. I doubt whether the party was liable to be removed, but there having been an order of removal unappealed from, it is decisive. The order was confirmed.

Even when a question of settlement is raised between two other parishes.

In *Rex* v. *Corsham, T.* 49 *Geo.* 3. 11 *East,* 388. *Bott, Cont.* 113. 2 *Nol. P. L.* 142. The pauper was removed from *East Moulsey* to *Corsham;* and it was confirmed by the sessions, who stated, that on the 9th of *April,* 1807, he had been removed from *Charlton* to *Garsdon,* and no appeal had been entered against that order; which removal was subsequent to a settlement he had gained in *Corsham.* — And the Court held, that this order of removal unappealed against, was conclusive as to the settlement of the pauper at that time, even upon a question of settlement between the two present contending parishes, and they quashed the order of removal to *Corsham.*

7. Of the Effect of confirming or quashing Orders of Removal appealed against; as,

(*a*) *Confirming, or quashing, upon the merits; — Upon what parishes it is conclusive.*
(*b*) *Quashing for form.*

(*a*) Upon the Merits.

Order confirmed upon the appeal is final; but an order discharged binds only the parties.

Mynton v. *Stoney-Stratford, M.* 13 *W.* 3. 2 *Salk.* 527.— By *Holt* C. J. and the Court: If on appeal to the sessions an order be discharged, that judgment binds only between the parties: But when upon appeal an order is confirmed, that is conclusive to all persons as well as to the parties, for it is an adjudication that this is the place of the party's last legal settlement.

Little Bitham v. *Somerby, M.* 6 *Geo.* 1. 1 *Stra.* 232. 2 *Nol. P. L.* 208. A person is sent by order of two justices to *Somerby,* as the place of his last legal settlement. *Somerby* appeals, and the order is confirmed. Soon after, without stating that he had gained any new settlement, *Somerby* sends him to a third place. — By the Court: An order of reversal is final only between the two parishes;

but if it be confirmed, it is final as to all the world; and therefore no new settlement appearing, the order of removal from *Somerby* must be quashed.

Harrow v. *Ryslip*, *M.* 10 *W.* 3. 2 *Salk.* 524. 3 *Salk.* 261. 2 *Bott*, 700. 2 *Nol. P. L.* 479. 3*d ed.* A person comes into *Harrow*, and being likely to become chargeable, was removed to *Ryslip*. *Ryslip* appealed; and upon the appeal he was adjudged to be settled at *Ryslip*. Afterwards *Ryslip* discovered that *Hendon* was the place of his last legal settlement, and sent him thither; and the question was, Whether, after the adjudication upon the appeal, *Ryslip* was not estopped against all the world, to say that *Ryslip* was not the place of his last legal settlement.—By *Holt* C. J. *Ryslip* is estopped to say otherwise; for if *Ryslip* had not been the very place of his last legal settlement, the justices must have sent him back to *Harrow*, who were first possessed of him, for that reason, because they were possessed of him, and he did not belong to *Ryslip*. And now this is in effect the same question again, namely, Whether he belongs to *Ryslip*? Which question has been already determined by the justices on the appeal, who have adjudged that he was last settled at *Ryslip*. Now this point being determined, the appeal must be final and conclusive, otherwise there would be no end of things.

An order of removal confirmed, is conclusive of the then place of settlement.

St. Michael's Bedingdon v. *Kingston Bowsey*, *H.* 19 *W.* 3. 2 *Salk.* 486. 2 *Bott*, 702. *n.* Order reversed on the appeal is conclusive only as to the parish acquitted, but the first parish may remove again to any parish not party to the former removal.

Order quashed, conclusive only between the parties.

Foston v. *Carleton*, *T.* 9 *Geo.* 1. 1 *Str.* 567. Two justices send a poor person from *Foston* to *Carleton*. On appeal the order is quashed; and at three months' end two justices, without shewing any new settlement since the last order, make a new order to remove him from *Foston* to *Carleton* a second time. — But by the Court: The last order must be quashed: The case of *Barrow* v. *Ingoldsby*, *E.* 11 *Ann.* was at the distance of nine months, but the Court quashed it, because there could be no inconvenience in putting them to shew a new settlement.

Rex v. *Bradenham*, *E.* 29 *Geo.* 2. *Burr. S. C.* 394. 2 *Bott*, 704. 2 *Nol. P. L.* 233, 234. Two justices by order of removal, dated *December* 30, 1754, send *John Saunders* and *Sarah* his wife and four children from *Thame* to *Bradenham*, as the place of their last legal settlement. *Bradenham* appealed to the next (*Epiphany*) sessions, and the order of the two justices was discharged. Afterwards on *March* 28, 1755, two justices make a new order, for removing *Sarah*, the wife of *John Saunders*, and her children from *Thame* to *Bradenham*. Upon appeal the sessions adjudge the last settlement of *Sarah Saunders* and her children to be in the parish of *Bradenham*, and confirm the order. On removal of these four orders into the Court of K. B., it was moved to quash these two last orders; and argued, that the order of reversal was conclusive between the two parishes, that, so there might be an end of things; and that one sessions shall not counteract and control the acts of a former, unless they state specially, which they have not done here. — By the Court: The last orders must be quashed. We must take the appeal, on which the original order is discharged, to be on the merits. The matter has been determined already between these two parishes, and it

Order of removal is, when quashed, conclusive between the two parishes, and upon a second removal between the same parishes, there must appear a new settlement.

Order of removal quashed: what parishes are concluded thereby.

R. v. Bradenham.

must be conclusive. But it is said, there are cases where there may be a new removal, as supposing there had been one or two years' distance between the two orders of removal, or a sufficient time to gain a new settlement; yet the Court will not intend one gained, unless it is stated in the order. And in this case there is no such time.

But special matter may be set forth by the sessions upon the second appeal, which may prevent the first order from being final.

Rex v. *Osgathorpe*, *E.* 19 *Geo.* 2. 2 *Stra.* 1256. 2 *Bott*, 703. 2 *Nol. P. L.* 233. A person was removed by order of two justices from *Diseworth* to *Osgathorpe*; which order on appeal was discharged. He was by a second order sent from *Diseworth* to *Osgathorpe* as a certificated man; and upon an appeal it was stated, that the first removal was *before* he became chargeable, and the second *after* he became so; and the sessions were of opinion that the first determination was not final between the parishes, and therefore confirmed the second order of removal. It was moved to quash these two last orders, on the authority of those cases wherein it hath been determined, that a reversal is final between the parties.—But by the Court: So it would be if the special matter did not appear; a certificated person cannot be sent back, until he is actually a charge; a removal before is premature. The consequence of which only is, that he must be suffered to remain till he doth become chargeable, but not to make a premature removal final for ever. The last orders must be confirmed.

Order confirmed on appeal conclusive to all the world, but if quashed, is conclusive only between the parties.

Rex v. *Cirencester*, *H.* 8 *Geo.* 2. *Burr. S. C.* 17. 2 *Bott*, 702. 2 *Nol. P. L.* 480. 3 *edit.* The pauper was removed from *Minety* to *Coln St. Aldwin's*; and on appeal the order was reversed. Afterwards he was removed from *Cirencester* to *Cold St. Aldwin's*. The former removal was on complaint of the parish of *Minety*; the latter on complaint of the parish of *Cirencester*: The parish to which the pauper was sent on both complaints was *Coln St. Aldwin's*. On appeal against this latter order, the sessions quashed the same, because they thought the first order conclusive.—By the Court: An order confirmed binds all the world; but when discharged, it is binding only between the parties concerned. For the discharge of the order doth not determine where the pauper is settled; but only, that he is not sufficiently proved to be settled in the particular parish to which the justices had removed him—And Ld. *Hardwicke* C. J. said, he took it to be clearly settled, where an order of removal is confirmed, that it is conclusive to all the world; where it is discharged, that it is conclusive only between the two contending parishes. And this distinction is reasonable; because a third parish may be able to give better evidence than the other could. And this latter order of sessions was quashed.

A discharged order of removal to A. does not prevent a third parish from shewing a settlement in A. gained subsequently to the order in question.

Rex v. *Bentley*, *E.* 30 *Geo.* 2. *Burr. S. C.* 425. 2 *Bott*, 704. 2 *Nol. P. L.* 234. The pauper was first removed from *Baxterley* to *Stourbridge*; which order, on appeal, was discharged. Then *Baxterley* removed to *Bentley*, and *Bentley*, upon appeal, offered to give evidence, that the pauper had gained a settlement at *Stourbridge*, subsequent to the settlement which they acknowledged he had gained in *Bentley*: The sessions refused to hear this evidence, because the settlement set up in *Stourbridge* was anterior to the first appeal made by *Stourbridge*, and confirmed the order of removal to *Bentley*.—By Ld. *Mansfield* C. J. and the Court; An order confirmed concludes all the world. It is a suit

instituted and determined by a Court having proper jurisdiction between all proper parties. For the parishes and the pauper were the only proper parties. It is establishing one certain fact, which, when ascertained, regards all the world, and is not to be considered in the light of a *res inter alios acta.* So the finding that such-a-one was the father of such a child, or the fact of a marriage, or that a person is executor, by suit properly instituted in the spiritual court; in all these cases, when the fact is once established by proper judges, and between proper parties, it is a truth which regards the whole world. But an order discharged is only a kind of negative finding, that such a settlement is not the last legal settlement. But does this establish the affirmative, namely, What is so? There is all the reason in the world to let in a third parish, not party to the suit, to give what evidence they can; because it would otherwise open a door to much collusion between parishes. The sessions in substance have said no more than this, "Upon the case made out to us, the pauper is not settled at *Stourbridge;*" but this ought not to conclude the third parish from giving what evidence they can to discharge themselves. And nothing is more common in settlement cases, than for one parish to be able to get at evidence, which another parish could not produce. — And the orders were quashed. R. v. Bentley.

(b) Of quashing for want of Form.

An order of two justices if quashed at the sessions upon an appeal, for want of form only, is not conclusive between the two parishes. *Fol.* 276. Order quashed for form, not conclusive.

By stat. 13 & 14 *C.* 2. *c.* 12. § 2. (p. 790.) it is expressed, that the justices, upon the appeal, shall do to the parties justice *according to the merits of their cause.*

And by stat. 5 *Geo.* 2. *c.* 19. § 1. On all appeals to the sessions against the judgments or orders of any justices of the peace, the justices there shall cause defects of form therein to be rectified and amended, without any costs to the parties concerned, and after such amendment shall proceed to hear, examine, and consider the truths and merits of the cause. 5 G. 2. c. 19. Defects of form to be amended.

Rex v. *St. Andrew, Holborn, E.* 36 *Geo.* 3. 6 *T. R.* 613. 2 *Bott,* 706. 2 *Nol. P. L.* 234. *M. Carter* and her illegitimate son were removed from *St. Andrew, Holborn,* to *Northaw,* On appeal the sessions stated the following Case: By an order of removal dated 24th *July,* 1794, *M. Carter* was ordered to be removed to *Northaw,* and she was removed accordingly. On appeal it was ordered, that the said order for want of a proper adjudication of the last legal settlement of the pauper, which was apparent on the face of it, should be quashed. Afterwards, on the 25th of *January,* 1795, the present order was made, whereby the said *M. Carter* and her son were again removed from *St. Andrew, Holborn,* to *Northaw.* Upon appeal, the sessions were of opinion that the said *M. Carter* and her son ought not to have been removed a second time, because the first warrant and judgment, having been quashed as before mentioned, was binding between the said two parishes, and therefore ordered the last warrant and judgment of 25th *January* 1795 to be quashed: — Ld. *Kenyon* C. J. said, that as the first order in this case was quashed for defect of *form,* which appeared by the minute

R. v. St. Andrew, Holborn.

of the sessions, it was essentially different from the cases cited, where the order was quashed generally, which must be taken to be on the merits. And it is undoubtedly law, that if an order of removal be quashed for form, it does not conclude the parties. Order of sessions quashed.

There must be a complaint; and adjudication of chargeability.

Rex v. *Great Bedwin*, *T.* 15 *Geo.* 2. 2 *Sess. Ca.* 142. 2 *Stra.* 1158. *Burr. S. C.* 163. 2 *Bott*, 714. 2 *Nol. P. L.* 194. 216. 218. 220. Order of removal of a certificated person, in which there was no complaint of the churchwardens or overseers, nor any adjudication that the certificated person was actually become chargeable. On appeal, the sessions in pursuance of stat. 5 *Geo.* 2., amend the order in these particulars, as matter of form only, and insert in the said order such complaint and adjudication. And now the question was, whether these amendments went only to matter of form, or to the substance and merit of the order? — By *Lee* C. J. There has been but one case in this court on this act since the making of it, and that was not determined: The present seems to be a very strong case against the power of amending. For there must be a *complaint* from the overseers, otherwise the justices have no power to remove; and a certificated person must be *adjudged* to be actually chargeable, otherwise he cannot be removed: And these amendments might be the real merits on which this case depended. And it would be a detrimental construction of the act, to take it so largely; and would be giving the sessions an original jurisdiction. And quashed by the whole Court.

Where the justices making the order want jurisdiction, it is a matter of *substance* and not of *form*, and such an order, although not appealed against, is totally void, and cannot be amended.

Rex v. *Chilverscoton*, *H.* 39 *Geo.* 3. 8 *T. R.* 178. 2 *Bott*, 695. 2 *Nol. P. L.* 142. 144. 213. 215. *W. Fennel* and his wife and children were removed from *Sow* to *Chilverscoton;* the sessions confirmed the order, and stated the following Case: The pauper was born about 55 years ago in *Sow*, but was settled in *Chilverscoton*. In 1779, he married his present wife in *Bedworth*, where he then resided; they were afterwards removed to *Sow* by the following order: "To the churchwardens and overseers of the poor of the parish of *Bedworth* in the county of *Warwick*, and to the churchwardens and overseers of the parish of *Sow* in the county of the city of *Coventry;* whereas complaint has been made by you the churchwardens and overseers of the poor of the said parish of *Bedworth* unto us whose hands and seals are hereunto set, two of H. M.'s justices of the peace (whereof one is of the quorum), *for the county aforesaid;* that *W. Fennel*, *E.* his wife, &c." [The other parts of the order were in the regular form, and it was dated 16th *March*, 1779. There was no county mentioned in the margin of the order.] Against this order there was no appeal. Afterwards in *May*, 1779, a certificate was granted by *Sow* to *Bedworth*, acknowledging the said pauper and his family to be settled in *Sow*, but at the time of granting this certificate no settlement had been gained in *Sow*, unless the above order of removal from *Bedworth* to *Sow* had conferred one; but the pauper's settlement had always continued at *Chilverscoton*. The question before the Court was, whether the above order of removal from *Bedworth* to *Sow* unappealed from, were good and binding, or defective and void. — Ld. *Kenyon* C. J. It is now too late to discuss one of the points made at the bar, namely, whether or not the sessions could amend in this case, it having been decided in *Rex* v. *Great Bedwin* (*supra*), that the sessions can

only amend mere defects or wants of form. I verily believe that if the legislature had been asked what was their intention when they passed stat. 5 *Geo.* 2. *c.* 19., they would have said they meant, that if upon inquiry it appeared that the pauper had been removed to his proper parish, the sessions would have power to correct all defects in the order: but the decision to which I before alluded was made ten years after the passing of the act, and at a time when Ld. C. J. *Lee*, who was peculiarly conversant in sessions law, presided here. And though I lament that that decision was made, because it renders the statute of little avail, yet it has been acted upon ever since, and it is important to adhere to determinations respecting settlements. Then is this an objection of form or of substance? It certainly is a matter of substance. It should appear upon the face of the order, that the justices who made it had jurisdiction; which if they had, every fair presumption will be made that they decided rightly; but if they had not, the proceeding is a nullity. It is said, however, that the parish of *Sow* ought not to be permitted, at this distance of time, to object to the order; but there is a maxim that *quod ab initio non valet tractu temporis non convalescet.* And as this order was void at the time when it was made, because it does not appear that the justices who removed had any jurisdiction, it cannot have become a valid order by the time that has since elapsed. The general proposition, indeed, that an order of removal unappealed against is conclusive on the parish to which the removal is made, cannot be shaken; but it must be understood as part of that proposition, that the order is not a nullity, but was made by two justices having jurisdiction to make it. The case of *Rex* v. *Stepney* (*ante*, p. 22.) is, I think, decisive of the present. — *Lawrence* J. expressing some doubt on the subject, the case was not then finally decided; but afterwards Ld. *Kenyon* C. J. said, that after considering the cases cited, and upon the authority of *Rex* v. *Stepney*, and *Rex* v. *Bedwin*, we are of opinion that the former order was a nullity; and though it was not appealed against, it is not conclusive on the parish of *Sow*. — Order of sessions confirmed.

Amending form.

R. v. Chilvers-coton.

In *Rex* v. *Moor Critchell*, *M.* 42 *Geo.* 3. 2 *East*, 66. Ld. *Kenyon* C. J. said, that it was to be lamented, that the stat. 5 *Geo.* 2. *c.* 19. which was intended to give the justices in sessions a power of amending orders of removal which were defective in point of form, had, by the construction which had been put upon it, been rendered a dead letter.

8. Of the Power of the Sessions in Orders of Removal; and herein,

(*a*) *Of their judgment upon them.*
(*b*) *Of stating a special case.*
(*c*) *Of costs and maintenance.*

(*a*) Of their Judgment upon them.

Rex v. *Bond*, *M.* 2 *Jac.* 2. 2 *Show.* 503. 2 *Bott*, 709. 2 *Nol. P. L.* 447. 3*d ed.* In this case it was determined that the court of quarter sessions cannot make an original order of removal.

The sessions cannot make an original order of removal.

Rex v. *Oswell* and *Woking*, *E.* 8 *W.* 3. 2 *Salk.* 472. 2 *Bott*, 711. 2 *Nol. P. L.* 447. 3*d ed.* An order was made upon appeal,

Must either quash or affirm.

setting forth, that by the order of two justices, upon a controversy before them between the parishes of *Woking* and *Oswell*, a poor person was removed to *Oswell*; and that upon complaint of the churchwardens of *Oswell*, the sessions ordered their order to be *superseded*, and that the person should be removed to "*Woking* aforesaid." And upon the report it seems that the Court were of opinion that the court of quarter sessions could not *supersede*, though they might *repeal* an order of removal.

And in *Rex* v. *Milverton*, *E.* 1 *Ann.* 2 *Bott*, 712. 2 *Nol. P. L.* 447. *3d ed.* The justices in sessions ordered that the first order should be quashed, and the party sent to the parish from whence he was thereby removed. And it was held, that they had only power to affirm or quash, but not to make a new order; and also that because an order might be good in part and bad in part, the first part was confirmed and the latter quashed.

The sessions may alter an order made at same sessions.

St. Andrew's Holborn v. *St. Clement's Danes*, *M.* 3 *Ann.* 2 *Salk.* 494. 2 *Bott*, 712. 2 *Nol. P.L.* 448. *3d ed.* The sessions made an order, and afterwards at the same sessions vacated it by a subsequent order. Both orders were returned upon a *certiorari*; and by *Holt* C. J. You should not have returned the vacated order, but only the latter. There ought not to be two different judgments. The sessions is all one day, and the justices may alter their judgment at any time while it continues.

Where justices are divided.

Rex v. *the Justices of Westmoreland*, *T.* 8 & 9 *Geo.* 2. 2 *Sess. Ca.* 193. 2 *Bott*, 713. 2 *Nol. P. L.* 446. *3d ed.* Order of two justices of the borough for removing a poor family. Appeal to the sessions of the county, at which only four justices were present, who were equally divided: so no determination was made, nor the appeal adjourned. A *mandamus* was directed to all the justices of the county in general, to proceed on the appeal. It was returned, that at such a sessions an appeal was lodged, and that four justices only attended, two whereof were interested in the question, and the other two were divided in opinion. It was agreed on all hands that this return was not to be supported. It was objected, that the *mandamus* ought to be quashed, because it doth not appear that the appeal was before them; and that, for ought appears, the *mandamus* requires the justices to do an impossible thing, *viz.* to proceed on an appeal not before them, since the appeal, being lodged at a former sessions, was not continued over to the subsequent sessions, and therefore was by law gone. On the other side it was said that it was not usual, in such cases, to return the continuances; but that if in fact there was no such continuance, the fault was in the justices, who ought to have adjourned the appeal, till by the coming of more justices the matter might have been determined. — Ld. *Hardwicke* C. J. The question is, whether there is a possibility of the justices' proceeding in this appeal? He thought if there was not, as there would be a failure of justice in this respect, an information ought to go against the justices who were at the sessions.

Note.] The C. J. advised the proceeding on the appeal or returning the continuances, and seemed inclined to grant a peremptory *mandamus* if they did not do so.

Judgment was entered by mistake on a miscalculation of

Rex v. *The Justices of Leicestershire*, *E.* 53 *Geo.* 3. 1 *M.* & *S.* 442. *Bott*, *Cont.* 114. This was a rule calling upon the justices to hear an appeal against an order of two justices, for the removal

of *William Clifton* and his children from the parish of *Market Harborough* to the parish of *Biddenham*, which came on to be heard at the *Epiphany* quarter sessions for the county of *Leicester*, when the chairman, after hearing evidence on the part both of the respondents and appellants, pronounced the judgment of the court, for confirming the order; but one of the justices who made the order, being present at the hearing of the appeal, inquired of the clerk of the peace whether he was not one of the justices making the order; and being answered in the affirmative, observed that it being contrary to a rule of that court, for justices who had made orders of removal to vote on the hearing of any appeal thereon, his vote in this case must consequently be withdrawn; and therefore judgment must be for quashing, instead of confirming the order, as by taking away his vote the majority would be against confirming, and for quashing the same. The clerk of the peace thereupon entered the judgment of the court for quashing, without perceiving at the time that by withdrawing the vote of the said justice the votes of the remaining justices would be equal; whereon, by the rules of the court, an adjournment of the appeal should have been entered, instead of a judgment to quash the order. Afterwards application was made to the chairman to rectify the judgment, but without effect. — Lord *Ellenborough* C. J. If any error was made in the entry of the clerk of the peace, that error should have been pointed out at the sessions, while the court was sitting, and competent to reform its own errors, and to draw out correct judgment. If no judgment had been pronounced, the court might have interposed; but here there is a judgment. The party who would have corrected the error should have applied to the proper forum and in due time; and if it had been found that the numbers were equal, nothing would have been done upon it; for it would have been a nullity: but here no step of that sort was taken, but judgment was entered; and this court cannot, in order to supply a remedy, exercise a jurisdiction which does not belong to them. *Mandamus* refused. — *Bayley* J. Except in matters of a criminal nature we cannot look dehors the record. This court cannot sit as upon a scrutiny before an election committee. In *Bodmin* v. *Walligen*, (2 *Bott*, 733. 5th *ed.*) the objection appeared upon the entry of record, made by the clerk of the peace. Rule discharged.

Justices in sessions may alter their judgment.

votes. Mandamus to rehear refused.

Justices in sessions may alter their judgment during the continuance of the sessions.

So in *Battersea* v. *Westham*, *E.* 10 *W.* 3. 2 *Bott*, 712. 2 *Nol. P. L.* 449. 3*d ed.* It was decided that the sessions may confirm an order which they had previously at the same sessions quashed.

But by *Rex* v. *Cuckfield*, *H.* 8 *W.* 3. 2 *Bott*, 711. 2 *Nol. P. L.* 449. 3*d ed.* The sessions cannot make an order of review, and quash an order of sessions made at the last preceding sessions.

But one sessions cannot quash the order of a former sessions.

(b) Of stating a Special Case.

It was moved to set aside an order of sessions confirming an order of two justices upon appeal. But the court would hear nothing of the merits of the cause, the order of sessions being in that case final, unless there had been error in form. 1 *Vent.* 310.

The justices not bound to express the reason of their judgment.

South Cadbury v. *Braddon*, *M.* 9 *Ann.* 2 *Salk.* 607. 2 *Bott*, 751. 2 *Nol. P. L.* 456. 469. 470. On appeal to the sessions, the court discharged the first order. It was moved to set aside

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the order of discharge, because the justices do not say whether they discharge it for form, or on the merits; for if it was for form, the parish is not bound; but if on the merits, the parish in consequence is hereby discharged for ever. — But by the Court: the justices are not bound to express the reason of their judgment, any more than other courts; but the reason of their judgment must be collected from the record. Particularly,

If the sessions reverse the first order, and that, being removed, appears to be good, this court will intend it was reversed on the merits, and affirm the order of sessions.

If the sessions reverse the first order, and that, being removed, appears not to be good, we must intend it was reversed for form, and affirm the order of reversal.

But if the sessions affirm the first order, and that appears to be good, we must affirm the order of sessions.

But if the first order appears bad, and the sessions affirm it, this court will reverse it, because it appears nought.

So that the case is this: If the sessions by their order do barely affirm or quash the order of two justices, and both the said orders are removed into the king's bench, the court hath nothing properly before them to judge upon, but the validity of the first order of the two justices. And if that order appears *good as to form*, and is *confirmed* by the sessions, the court will intend it was confirmed upon the merits: If it is *good as to form*, and quashed by the sessions, the court will intend it was quashed upon the merits: If it is *bad as to form*, and is *confirmed* by the sessions, the court will quash the confirmation, because it appears to be erroneous: If it is *bad as to form*, and is *quashed* by the sessions, the court will intend it was quashed for form.

But if the sessions, by their order, do not barely affirm or quash the order of the two justices, but set forth the reasons of their said order, and state the case specially thereupon: then the court will judge upon the case so stated by the sessions; that is to say, they will judge of the law as it arises upon these facts stated, but not of the facts themselves, for those they will suppose to have appeared sufficiently to the justices upon the evidence. And this is the method, when the justices are doubtful in point of law, whereby to obtain the opinion of that court, namely, in their order of sessions, which confirms or quashes the order of the two justices, to state the case specially; and then the party which is not satisfied, by procuring the same to be removed into the king's bench by *certiorari*, may have it determined there by the judgment of that court, who will quash or confirm the order of the sessions as they see cause.

Sessions are not compellable to state cases.

If the justices will not state the case specially, though it may be blameable conduct in them in some instances, yet there are no means to compel them. (*a*) As in the case of *Rex* v. *Oulton*, *M.* 9 *Geo.* 2. *Burr. S. C.* 64. 2 *Bott*, 738. 2 *Nol. P. L.* 457. 3*d ed.* Two justices removed three children of *Francis Ailmer* from *Wells* to *Oulton:* and the sessions upon appeal confirm their order, generally, without stating any special case. The counsel for *Oulton*

(*a*) In *Rex* v. *Darley Abbey*, 14 *East*, 285. *Bayley* J. said, the magistrates ought not to be induced to send up cases for our opinion, if they have no doubt upon the question in their own minds; in order to avoid incurring unnecessary expences. See also the observation of *Bayley* J., 1 *M.* & *S.* 376.

excepted at the sessions to their refusing to state the case specially, and delivered into court a bill of exceptions under their hands, which was read and received by the Court. The substance of the exceptions was, that the said children, after their father's death, went with their mother to an estate of her own at *Burnham Overy*, and there inhabited with her upwards of three months. These exceptions were returned up together with the orders. And it was moved to quash the order of sessions, together with the original order of two justices. The Court were inclinable to come at this case if they could, as it seemed to be a determination against law. — But by Ld. *Hardwicke* C. J. To what purpose should we make a rule to shew cause why this order of sessions should not be quashed? For I do not see, that we can ever make such a rule absolute; because this that is alleged to have been the real state of the case doth not appear to us to be the fact. And how can we take it for granted that it was the real fact? To be sure, it is a thing very much to be censured and discommended, when an inferior jurisdiction endeavours to preclude the parties from an opportunity of applying to a superior. But still we must go according to the due course of law. — And Mr. J. *Page* said, he never knew an instance, that this Court could force the justices, against their will, to state a special case. *Of stating a special case.*

And in *Rex* v. *Preston upon the Hill*, *E.* 9 *Geo.* 2. *Burr. S. C.* 77. 2 *Bott*, 713. 2 *Nol. P. L.* 443. 457. *3d ed.* Two justices made an order for removal of the pauper from *Daresbury* to *Preston*. And upon appeal to the sessions, they confirmed the said order, generally; not caring to state any special case in their order. A motion was made to quash these orders; which came before the Court upon a bill of exceptions, containing a special state of the case. On shewing cause, the single question was, whether a bill of exceptions would lie in this case to the court of quarter sessions. — By Ld. *Hardwicke* C. J. This is a case of great consequence; and there may be very great inconveniences on either side. It hath been much wished, that a bill of exceptions would lie to the justices at their sessions; because otherwise it may sometimes happen, that they may determine in an arbitrary manner, contrary to the resolutions of the courts of law. For if the justices will not state the facts specially (though requested to do so) when the matter is doubtful, this is a very blameable conduct in them, and it is to be wished that it might be avoided. On the other hand, there may be very great inconveniences arising from the abuse of bills of exceptions. And this matter of the settlement of the poor, which ought to be rendered cheap and speedy, may by such means be rendered dilatory, expensive, and burthensome. And after a full hearing of the arguments on both sides, the Court were unanimously of opinion, that a bill of exceptions doth not lie to the quarter sessions. **A bill of exceptions, does not lie to the justices at their sessions.**

Where the case is insufficiently stated, the Court of K. B. frequently send it back to the sessions to be re-stated; who may hear fresh evidence or re-state the same upon the former evidence, according to the nature and circumstances of each case. In the case of *Rex* v. *Bray*, *E.* 11 *Geo.* 3. *Burr. S. C.* 682. 2 *Bott*, 743. 2 *Nol. P. L.* 508. 511. 513. 525. *3d ed.* which **Where a case is insufficiently stated, it may be sent back to the sessions.**

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was on the point of hiring for a year: the sessions had stated the evidence only and not the fact of hiring. It was sent back to the sessions to be re-stated: and the majority of the justices there refused to re-examine the pauper, or to hear any further evidence; although three of the justices then on the bench had not been present at the appeal. It was moved to send it again to the sessions, to be a second time re-stated. And two cases were cited; one of them was *Rex* v. *Page, M.* 1764, where the question was, whether a man was occupier of tithes, or only bailiff? The sessions was ordered to hear further evidence; and did so. The other case was, *Rex* v. *Hitcham, H.* 33 *Geo.* 2., where the sessions did re-examine the fact, whether the pauper was a single or a married man, when hired?—Unto this it was answered, that these two cases were not like the present case. In both of them it was necessary to hear the evidence over again: In the present case, it was not necessary; the matter was fully examined into before; the sessions had stated the evidence, without drawing the conclusion; the Court thought the sessions ought to have drawn the conclusion, and sent it back to them for that purpose only. They have now done so. They have stated a hiring for a year. And this Court have now received all the information they wanted.—By Ld. *Mansfield* C. J. Whether the justices at the second sessions were or were not obliged to hear new evidence, is a question that must depend upon the nature of the case. In *Page's* case, new evidence was necessary. But in the present case, it was sent back only to cure an informality. Here, the pauper had before given a full account of the agreement. Therefore the justices at this second sessions did very right in not examining him over again.

What is to be done with the pauper when the order of removal is quashed.

After the determination of an appeal at the sessions, if the order is reversed, there is a difficulty sometimes in getting the paupers back again to the place from whence they were unlawfully removed. If they will not, or are not able to return of themselves, it seemeth that the place where they are cannot lawfully be rid of them but by another order of the justices, setting forth the matter specially. As in the case of *Honiton* v. *South Beverton, M.* 8 *W.* 3. *Comb.* 401. 2 *Bott*, 700. 2 *Nol. P. L.* 246. Two justices remove a man from *Honiton* in the county of *Devon*, to *South Beverton* in the county of *Somerset*. They appeal to the sessions in *Devon*, where the order is reversed. Now two justices in the county of *Somerset* may by order remove him to *Honiton* again; for it is but an execution of the order of sessions, which could not otherwise be done, because it is out of the jurisdiction of the court of sessions.

A *certiorari* to remove an order of sessions confirming an order of removal, must be moved for within six calendar months after such order of sessions made, and six days

Rex v. *The Justices of Sussex, T.* 53 *Geo.* 3. 1 *M. & S.* 631. *Bott, Cont.* 31. *D'Oyley* obtained a rule *nisi* in Easter term for a *certiorari* to remove an order of the *Sussex* sessions in an appeal between the parishes of *Billinghurst* and *Slinfold*. The affidavits on which the rule was obtained, stated, that the appeal in question had been heard at the last *Michaelmas* sessions for *Susex*, when the order of removal was confirmed, subject to the opinion of the Court of K. B. on a case to be stated. That a case had been accordingly drawn by counsel for the parish of *Billinghurst* in *November* last; which, however, was not approved of by the solicitor for *Slinfold;* but although frequent applications were

made to him, he would not state his objections. The case was afterwards settled by the Court at their *Epiphany* sessions, and a copy sent to the solicitor for the respondents; and he was again applied to, to have the case set down for argument: this request he refused to comply with; but at the same time gave the solicitors for the appellants to understand, that they need be under no apprehension, as he would consent to a *certiorari* issuing, without regarding whether the six months had expired or not. Under the impression that the *certiorari* would be consented to, the usual notice to the justices as required by stat. 13 *Geo.* 2. *c.* 18. § 5. had not been given. — On shewing cause against the rule, the words of the stat. were relied upon.— And in support of the rule, it was contended, that the statute was only intended to enable justices to shew cause against the *certiorari* if they should think fit, and did not apply to this case, where the justices themselves had settled the case, and thereby expressed their desire to have it brought up; and cited Ld. *Kenyon*'s words in *Rex* v. *Battams*, 1 *East*, 298. — Ld. *Ellenborough* C. J. The order of removal was, in the first instance, a summary proceeding, and the order of sessions thereupon was a revision of that which was originally a summary proceeding. I find nothing in the language of Ld. *Kenyon* on which an argument has been raised, to the contrary: it is not applicable to the present case. Admitting that the magistrates may have wished, at the time when they settled the case, to have brought it up; still there may be reasons why they might think fit to shew cause, and unless it can be shewn that it could serve no possible end to give them six days' notice, we cannot so presume. The statute appears to me imperative. The other judges concurring. — Rule discharged. The application for a *certiorari* was renewed by *D'Oyley*, on a subsequent day, in the same term, (1 *M.* & *S.* 734.) the six days' notice having, since the former rule was discharged, been given to the justices as required by stat. 13 *Geo.* 2. *c.* 18. § 5. He urged as an excuse for the lateness of the application, that the case had not been finally settled till the *Epiphany* sessions, before which time the parties could not come to the Court for the removal of the order, and the delay in settling the case was attributable entirely to the other side. Admitting, in general, that the six months would run from the time when the order of sessions was made, which, in this case was at the *Michaelmas* sessions: still the above circumstances took it out of the general rule. He cited *Rex* v. *Winpenny*, 34 *Geo.* 1., where a similar application for removing an order for the maintenance of a bastard child, was made after the six months, and allowed.—Ld. *Ellenborough* C. J. The statute expressly requires that the *certiorari* shall be applied for within six calendar months, after order made; and I think it will be attended with beneficial consequences if we put a strict interpretation upon this clause, as it will have a tendency to accelerate the settling of the cases which are intended to be brought up for our revision. — *Bayley* J. In strictness the case ought to have been settled at the *Michaelmas* sessions, *sedente curiâ*. Rule refused.

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notice of such motion must given to the justices pursuant to stat. 13 G. 2. c. 18. § 5. notwithstanding the order of sessions was made subject to the opinion of this court on a case to be stated.

(c) Of Costs and Maintenance.

8 & 9 W. c. 30. Justices, on appeal to them concerning the settlement of any poor person, to award costs.

By stat. 8 & 9 *W. c.* 30. § 3. For the more effectual preventing of vexatious removals and frivolous appeals, it is enacted, that the justices of the peace of any county or riding, in their general or quarter sessions of the peace, upon any appeal before them there to be had, for and concerning the settlement of any poor person, or upon any proof before them there to be made, of notice of any such appeal to have been given by the proper officer to the churchwardens or overseers of the poor of any parish or place (though they did not afterwards prosecute such appeal) shall, at the same quarter sessions, award and order to the party for whom and in whose behalf such appeal shall be determined, or to whom such notice did appear to have been given as aforesaid, such costs and charges in the law, as by the said justices in their discretion shall be thought most reasonable and just, to be paid by the churchwardens, overseers of the poor, or any other person, against whom such appeal shall be determined, or by the person that did give such notice, as aforesaid; and if the person ordered to pay such costs shall happen to live in any county, riding, city, or town corporate, or elsewhere, out of the jurisdiction of the said court, it shall and may be lawful for any justice of the peace of the county, riding, city, liberty, or town corporate, wherein such person shall inhabit, and every such justice is hereby required, upon request to him for that purpose to be made, and a true copy of the order for the payment of such costs produced, and proved by some credible witness upon oath, by warrant under his hand and seal, to cause the money mentioned in that order to be levied by distress and sale of the goods of the person that is ordered and ought to pay the same; and if no such distress can or may be had, to commit such person to the common gaol of that county, or liberty, there to remain by the space of twenty days.

Person ordered to pay costs living out of the jurisdiction, justice of the county, &c. where such person inhabits, may cause the money to be levied; if no distress, offender to be committed to gaol.

The sessions are judges whether costs shall or shall not be given.

Rex v. *The Justices of the County of Nottingham, M.* 5 *Geo.* 2. 1 *Ses. Ca.* 422. 2 *Bott*, 756. 2 *Nol. P. L.* 473. 477. 3*d ed.* A *mandamus* was granted for the justices to give costs to the party in whose favour the appeal had been determined; yet upon their return of it, the Court held it reasonable for them to have the power of judging whether costs shall be allowed or not, and thereupon quashed the writ of *mandamus*.

They cannot give costs on a mere adjournment.

Rex v. *Stanfield, E.* 16 *Geo.* 2. *Burr. S. C.* 205. 2 *Bott*, 756. The sessions adjourned the appeal to the next quarter sessions, and ordered four guineas costs to the appellants; which order was quashed as to the costs; for the sessions cannot give costs on a mere adjournment of the appeal, without hearing it.

9 G. 1. c. 7. Maintenance to be reimbursed.

By stat. 9 *G.* 1. *c.* 7. § 9. For the preventing of vexatious removals, if the justices shall at their quarter sessions upon an appeal before them there had, concerning the settlement of any poor person, determine in favour of the appellant that such poor person was unduly removed, they shall, at the same quarter sessions, order and award to such appellant so much money as shall appear to the said justices to have been reasonably paid by the parish, or other place, on whose behalf such appeal was made, towards the relief of such poor person, between the time of such undue removal, and the determination of such

appeal; the said money so awarded to be recovered in the same manner as costs and charges upon an appeal, are to be recovered by stat. 8 & 9 *W.* 3. *c.* 30. *Of costs and maintenance.*

St. Mary's Nottingham v. *Kirklington*, *E.* 3 *Geo.* 2. 2 *Sess. Ca.* 67. 2 *Bott*, 756. 2 *Nol. P. L.* 286. 477. Motion for a *mandamus* to the justices of the town and county of *Nottingham*, commanding them to allow the parish of *Kirklington* the expense and charges their officers had been put to, in keeping a poor person from the time of his removal till the order was discharged by the sessions upon appeal. And a *mandamus* was granted. See *Rex* v. *Justices of Norfolk*, *ante*, p. 807.

Sessions must either give, or refuse, costs of maintenance, at the time of making their order.

Rex v. *Great Chart*, *M.* 16 *Geo.* 2. *Burr. S. C.* 194. 2 *Bott*, 756. 2 *Nol. P. L.* 477. 525. The order of the two justices was quashed by the sessions for insufficiency; and the sessions thereupon order that the costs of maintaining the pauper, since the time of his removal, shall abide the event of the cause, in case the said parish of *Great Chart* shall think proper by another order to remove the pauper to the said parish of *Kennington:* Which order, as to the costs, was quashed by the Court of K. B.; because the sessions must either give, or not give, costs *at the time* when they make their order.

ADDENDA.

Poor (*Overseers*) Contracts.

[*Vide ante*, p. 38.]

By stat. 55 G. 3. c. 137. § 6. no churchwarden or overseer of the poor, either in his own name or in the name of any other person, shall supply *for his own profit* any goods, materials, or provisions for the use of any workhouse, or otherwise for the support or maintenance of the poor in any place for which he shall be appointed overseer, during the time he shall retain such appointment, nor shall be concerned directly or indirectly in supplying the same, or in any contract or contracts relating thereto, under the penalty of 100*l.*: Held, that an overseer who supplied coals indirectly for the use of the poor, was not liable to any penalty, unless he did it with a view to his own profit.

SKINNER v. *Buckee*, *T.* 5 *G.* 4. 3 *B.* & *C.* 6. This was a penal action, founded on 55 *G.* 3. *c.* 137. § 6. The first count of the declaration charged, that the defendant, on, &c., was overseer of the poor of the liberty of *Saffron-hill*, *Hatton-Garden*, and *Ely-rents*, in the county of *Middlesex*, duly appointed in that behalf, to wit, at, &c., and that during the time he retained such appointment as aforesaid, to wit, on, &c., did, in his own name, provide, furnish, and supply certain goods, to wit, coals for the use of a workhouse belonging to the said liberty for which he was appointed, to wit, at, &c., contrary to the form of the statute, by reason whereof, &c. Another count stated, that the defendant did, in the name of a certain other person, provide, furnish, and supply for his, defendant's, own profit, coals for the use of a certain workhouse, &c. The third count stated, that he was concerned indirectly in supplying, for his own profit, coals, &c. The fourth stated, that he was concerned directly in supplying coals for the use of the workhouse, (omitting the words, "for his own profit.") The fifth count was, that he was concerned indirectly in supplying coals for the use of the workhouse. The sixth count, that he was concerned in a certain contract relating to the providing, furnishing, and supplying goods, materials, and provisions for the use of the workhouse. At the trial before *Abbott* C. J., at the sittings after *Mich.* term 1823, it appeared that the defendant was a coal-merchant, and that he was duly appointed overseer of the liberty of *Saffron-hill*, *Hatton-Garden*, and *Ely-rents*, and during the time that he was overseer, a quantity of coals were provided for the workhouse, nominally by one *Gaubert*, who was the brother-in-law of the defendant, but that the latter had an interest in the coals. It was doubtful upon the evidence, however, whether either he or *Gaubert* made any profit by them. The Lord Chief Justice was of opinion, that unless the defendant acted with a view to profit, it was not a case within stat. 55 *Geo.* 3. *c.* 137. § 6.; and he told the jury to find for the defendant, if they were of opinion, upon the evidence, that the defendant did not send in the coals with a view of making a profit. Verdict for defendant. Rule *nisi* obtained in *Hilary* term. —*Per Abbott* C. J. We are all of opinion that this rule must be discharged. The question, in this case, arises upon the construction of stat. 55 *Geo.* 3. *c.* 137. § 6.; the words are, that "no churchwarden or overseer of the poor, either in his own name, or in the name of any other person or persons, shall provide, furnish, or supply, *for his or their own profit*, any goods, materials, or provisions, for the use of any workhouse, or otherwise, for the sup-

port or maintenance of the poor in any parish or place for which he shall be appointed such overseer, during the time which he shall retain such appointment; nor shall be concerned directly or indirectly in furnishing or supplying the same, or in any contract or contracts relating thereto, under the penalty of 100*l*." Now, if the overseer himself, in this case, had supplied all the provisions required for the support of the poor, at prime cost, and not with a view to his own profit, it is quite clear that he would not have committed any offence within the words of this part of the act of parliament: that was laid down by *Gibbs* C. J. in *Pope* v. *Backhouse*, 8 *Taunt.* 248. Inasmuch, therefore, as an overseer providing, in his own name, the poor of his parish with all the provisions and goods required for their support, would not be liable to any penalty, provided he made no profit, it cannot be supposed that the legislature intended that the same overseer who is concerned directly or indirectly in any contract for supplying any part of the provisions, however small, should be liable to a penalty, although he derived no profit from it; that would involve a manifest contradiction. I think, therefore, that the words, *for his own profit*, must be taken to over-ride the whole clause, and that the legislature intended that no overseer for his own profit, either in his own name, or in that of any other person, should supply the poor with provisions, nor be concerned, directly or indirectly, in any contract relating to it. *R. D.*

Skinner v. Buckee.

[*Vide ante*, p. 132.]

Form of Rate.

Erratum: — For	Sums assessed sixpence the Pound.	Read	Sums assessed at sixpence in the Pound.

[*Vide same page.*]

Rex v. *The Undertakers of the Aire and Calder Navigation*, *E.* 5 *Geo.* 4. 2 *B.* & *C.* 713. Upon an appeal against a rate or assessment made for relief of the poor of the township of *Castleford*, in the West Riding of the county of *York*, the sessions confirmed the rate, subject, &c. — Case: On the rate in question being produced, it appeared that the property in respect of which the defendants were rated was specified; but with respect to all the other individuals charged thereby, it altogether omitted to state the property in respect of which they were rated. The first of those assessments was as follows:

A poor-rate must shew upon the face of it in respect of what property the assessment is made upon each individual charged by the rate.

Occupier,	Rate,	Assessment,
Ashton Joseph.	1*l.* 8*s.* 9*d.* -	2*s.* 10*d.*

and all other assessments were in a similar form. It was objected, that it should have appeared by the rate, in respect of what property the assessment was made, and that objection was specifically pointed out by the notice of appeal. The sessions overruled this objection, subject to the opinion of this Court. The case then set out the discussion which took place, as to the liability of the defendants to be rated in respect of the property for which they were charged; but it became immaterial, as the Court decided the case upon the first point. — *Abbott* C. J. The objection to the form of the rate is decisive. If any person wished to appeal, on the ground that another was under-rated, how could he tell in

respect of what property the rate was imposed? Order of sessions quashed.

[*Vide ante*, p. 263.]

A notice of appeal against overseer's accounts, stated that the appellant objected to certain specified payments alleged in the accounts, to have been made to persons specified by name in the notice: Held, that the notice was bad, because it did not state the cause and ground of appeal as required by stat. 41 G. 3. c. 23. § 4. The attornies, some days before the appeal was tried, agreed to admit on the trial of the appeal, that the sums objected to were paid to the persons to whom it was alleged in the accounts that they were paid: Held, that this was not any waiver of the irregularity in the notice because the consent of the attornies was not signified in open court.

Rex v. *Joseph Sheard and Another, Overseers of Soothill, E.* 5 *G.* 4. 2 *B.* & *C.* 856. Upon an appeal by *John Twigg* against the accounts of the overseers of the poor of the township of *Soothill* from *April* 1822 to *April* 1823, the counsel for the respondents objected to the sufficiency of the notice given by the appellant; the sessions, however, over-ruled the objection, and proceeded to hear the merits of the appeal, and struck out certain items in the accounts, subject, &c.—Case: The appellant was a rated inhabitant of the township of *Soothill*, and having, at the *October* sessions 1823, entered an appeal against the accounts of the respondents on the 2d of *January* 1824, served the following notice upon the respondents. This notice stated, that the appellant, at the last adjourned quarter sessions, had entered his appeal against the accounts of *Joseph Sheard* and *Thomas Tong*, overseers of the poor of the township of *Soothill*, from the month of *April* 1822 to the month of *April* 1823, and that the appellant would object to thirty-five items or charges of payments in the accounts specified in the notice. It then set out the names of the persons on whose account the payments were made, the sums paid, and, in some instances, the purposes for which they were made. It then proceeded to state that the appellant would insist upon the appeal that all these items ought to be struck out of the accounts and disallowed. The counsel for the respondents objected to the hearing of the appeal, on the ground that the particular causes and grounds of appeal against the items contained in the said notice were not specified and stated in the said notice, as directed and required by stat. 41 *Geo.* 3. *c.* 23. § 4. On the 14th day of *January*, 1824, the day before the appeal came on to be heard, the attorney for the respondents and the attorney for the appellant entered into the following admissions: "We do agree to admit that all the payments charged in the accounts of the respondents to which the appellant objects, were actually made to or for the use of the several persons to whom the same are charged to have been paid, and that the several sums charged in such accounts to have been paid to three several persons (named in the notice of appeal) respectively, were for debts contracted by the overseers of the poor of the township of *Soothill*, in one or more years previous to the year in which the respondents were overseers, and were not contracted by the respondents for the service of their current year, and the respondents undertake to produce upon the hearing of the appeal the original accounts, and vouchers regarding the items and sums of money objected to by the appellant. The court of quarter sessions, without expressing any opinion as to the validity of the notice, considered the admissions as a complete waiver of the objection to it, and entered into the merits of the said appeal. The case having been argued. *Cur. adv. vult. Bayley* J., afterwards delivered the judgment of the Court. The stat. 41 *Geo.* 3. *c.* 23. requires one of two things, either notice in writing, stating and specifying the particular causes or grounds of appeal; or secondly, consent by

the overseers, to be signified by them or their attorney in open Court, that the sessions may proceed, though there has been no proper notice. The notice in writing is to be signed by the party giving it, or his attorney, and to be left at the place of abode of the officers, and the sessions are not to examine into any other cause or ground of appeal than those which the notice specifies. Two questions therefore arise: Has there been such a notice as the statute requires? Has there been such a waiver? In this case, the original notice, which was served eleven days before the commencement of the sessions, merely stated that the appellant would object to thirty-five items or charges of payment, which he specified. On what grounds he would object he did not state. The day after the sessions commenced, being the day before their adjournment day, the attornies for the appellant and respondents agreed to admit, that all the payments objected to were in fact made, but that three of them were for debts contracted in prior years, not for debts contracted for the service of the year to which the accounts referred, and the respondents agreed to produce the original accounts and vouchers regarding the items objected to. The sessions expressed no opinion as to the notice, but thought these admissions a waiver of all objections to it. As to the waiver, the statute expressly provides that the sessions shall not examine or enquire into any ground of appeal not specified in the notice, with this single exception only, of consent by the overseers, signified by them or their attorney in open court; and we think that the statute has excluded, and intended to exclude, all questions of waiver in any other way, and that as there was no such consent as the statute requires, we cannot enter into the question of any other species of waiver. Then can it be said that this notice states and specifies the particular causes and grounds of appeal? It states only, that the appellant will object to thirty-five items or charges of payment: but why? It may be because they are false items, that they have have not been paid; it may be, because, they ought not to have been paid; it may be because though paid, and rightly paid, they ought not to be brought in charge against the parish, but ought to be borne personally by the overseers. And where a notice is general, and leaves it uncertain upon which of several possible grounds of objection, an item is questioned, can we say that it states and specifies a particular ground? We think not. Then, will the admissions supply the defect in this notice, not as a waiver but as making it a good notice in itself. The statute prescribes no form of notice; it specifies no time within which it shall be delivered; and its only object being that the respondents may know distinctly what objections they are to prepare to meet; and so long as that knowledge is fairly communicated to them in writing, it may be thought, that the mode in which it is communicated is immaterial. But it can never be supposed that the respondent's attorney meant, by entering into these admissions, to waive any other objections, which would otherwise have been open to him; his authority would be to uphold the rights of the respondents, not to give them up; and where the statute requires notice in writing to be left at the place of abode of the persons on whom it is to be served, we think we ought not, except upon very

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clear grounds, to allow it to be dispensed with.—Order of sessions quashed.

[*Vide ante*, p. 275.]

An illegitimate child born in an extra parochial place does not follow the settlement of its mother.

Rex v. *The Inh. of St. Nicholas, in the Borough of Leicester, E.* 5 *Geo.* 4. 2 *B. & C.* 889. Removal of *Caroline Littlewood* from the parish of *All Saints*, in *Derby*, to the parish of *Saint Nicholas*, in *Leicester*; the sessions confirmed the order, subject, &c.—Case: The pauper was the illegitimate child of *Elizabeth Littlewood*, deceased, and was born in the month of *May*, 1822, in an extra-parochial place, called the *Black Friars*, in *Leicester*, which is not a vill, and for which no overseers have ever been appointed. She was shortly afterwards taken by her mother to the parish of *All Saints*, *Derby*, where she remained until the death of her mother, and up to the time of making the order of removal in question. *Elizabeth Littlewood*, the mother, had, six years previously to the birth of the pauper, gained a settlement in the parish of *Saint Nicholas*, and was legally settled in that parish at the time of the birth of the child and of her own death.—After hearing counsel in support of the order of sessions; *Bayley* J. The argument in support of the order of sessions is founded upon the assumption, that every person is by law entitled to a settlement in some place; but that is by no means the case, for foreigners have not any settlement in this country. A settlement attaches to those persons only concerning whom those circumstances may be affirmed, which acts of parliament say shall give a settlement. Generally speaking, an illegitimate child is settled in the parish where it is born. There are some exceptions to this general rule noticed in the treatises on the poor laws. In most of the excepted cases the mother, at the time of the birth, is in law supposed to be in the place of her settlement, where she ought to be: as, where a woman with child is removed out of one parish into another, through the fraud or collusion of its officers, or where the child is born pending an order of removal. In one of these cases, the child, when born, is settled in the parish from which the mother has been fraudulently removed; in the other, in the parish to which she is ordered to be removed. (*a*) In this case the child was born in an extra-parochial place. It therefore has not any settlement by birth, and being a bastard, it can derive none from its parent. In such cases, however, it is entitled to remain with its mother as long as the purposes of nurture require it, and it will afterwards be entitled to relief as casual poor, although it has not any settlement. We are all of opinion that the order of sessions must be quashed. Order of sessions quashed.

(*a*) See several Cases in 2 *Bott.* *c.* 1. § 1.

[*Vide stat.* 3 & 4 *W. & M. c.* 11. § 7., *ante*, p. 336.]

Where a pauper served under a yearly contract in the parish of *A.*, and was again hired in the

Rex v. *The Inhab. of Apethorpe, E.* 5 *Geo.* 4. 2 *B. & C.* 892. Removal of *H. Scotney* and *Rebecca* his wife, from the parish of *Apethorpe*, in the county of *Northampton*, to the parish of *Sudborough*, in the same county; the sessions quashed the order, subject, &c.—Case: The pauper, *H. Scotney*, being settled in *Apethorpe*, was hired about six years ago by a Mr. *Gilby*, of *Brig-*

stock, for a year, to commence at *Old Michaelmas*, the whole of which service he performed at *Brigstock*, sleeping also in that parish. Before the expiration of the year Mr. *Gilby* again hired the pauper from the following *Old Michaelmas* to the *New Michaelmas* succeeding. There was no interruption of the service; and under the second hiring, the pauper served his master about half a year in *Brigstock*, and then removed with him to *Sudborough*, in which latter parish he finished his service under such second hiring, and slept the last forty nights in *Sudborough*. —In argument, *Rex* v. *Croscombe, Burr. S. C.* 256. *ante*, p.401. was cited. — *Per Bayley* J. I am of opinion that the order of sessions is right. If the pauper gained any settlement in the parish of *Sudborough*, in this case, it would follow, that wherever there was once a hiring for a year, and the pauper afterwards continued with the master as a weekly servant for twenty years, and resided in twenty different parishes, he would be settled in the parish where he resided for the last forty days, although at that time he were not hired for a year. It appears to me that the case of *Rex* v. *Croscombe* does not bear upon the present case. There the pauper hired himself to live with Dr. *Lucy* as his servant for a year for 4*l.* and a livery; he did accordingly live with his master during that year, and without coming to any new agreement, continued with his master in the same parish about a quarter of a year longer. The master then removed to another parish, and the pauper continued to live with him about six months in the latter parish upon the terms of the first contract, and was paid wages at the same rate. Now in that case, at the expiration of the first year, a new hiring for a year was fairly to be presumed from the circumstance of the pauper continuing in the same service without any alteration of the terms; and if the service in the last year was to be considered as a service under a renewed yearly hiring, that case does not at all bear upon the present. That such was the ground upon which the Court proceeded in that case appears from what was said by *Willes* J. in delivering the judgment of the Court in *Rex* v. *St. Giles, Reading, Cald.* 56; "*Rex* v. *Croscombe* does not apply, because the Court presumed the continuance of the old contract." There being no authority therefore bearing upon the subject, we must look to the words of the stat. 3 & 4 *W. & M. c.* 11. § 7.: they are, "if any unmarried person, not having child or children, shall be lawfully hired into any parish or town for one year, such service shall be adjudged and deemed a good settlement *therein*." The word *therein* refers to the parish or town into which the party has been hired for one year. The settlement therefore attaches to him in that parish or town where he has the character of a servant hired for a year. The 8 & 9 *W.* 3. *c.* 30. recites, "that doubts had arisen touching the settlement of unmarried persons, not having child or children, lawfully hired into any parish or town for one year; and enacts, "that no such person *hired as aforesaid*, (*i.e.* lawfully hired into the parish for one year,) shall be adjudged or deemed to have a good settlement in any such parish or township, unless such person shall continue and abide in the same service during the space of one whole year." The latter statute therefore requires, that in order to gain a settlement by the hiring and service mentioned in the former statute,

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same parish by the same master for a less period than a year, (there being no interruption of the service,) and during the latter period removed with his master into the parish of *B.*, and served him there: Held, that the pauper did not acquire a settlement in that parish, inasmuch as no part of his service there was under a yearly hiring.

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(which was a hiring into a parish for a year,) the party should continue in the same service for the space of one whole year. The former statute requires, that the contract should be for a year, and that the service should be under the contract of hiring there mentioned. The latter statute requires besides, that in order to gain a settlement, the service should continue for a year. I am therefore of opinion, that a settlement can be gained by hiring and service in that parish only where the party has the character of a servant hired for a year; and that being so, the pauper in this case did not gain a settlement in the parish of *Sudborough*, and therefore the order of session is right. — *Holroyd* J. The case of *Rex* v. *Croscombe* is distinguishable from the present, upon the grounds stated by my brother *Bayley*. In that case, Lord *Lee* C. J. certainly gave an extrajudicial opinion, that the service in the second year need not be under any contract of hiring, provided it was a continuance of the same service; but when the state of the law, as it is existed between the passing of stat. 3 & 4 *W. & M.* c. 11., and stat. 8 & 9 *W.* 3. c. 30., comes to be considered, I think it perfectly clear that that opinion cannot be supported. By stat. 13 & 14 *Car.* 2. c. 12., overseers were authorized to remove a pauper to a parish which was his last place of settlement for forty days, either as householder, &c. or as a servant. At that time, therefore, a service for forty days conferred a settlement. The 3 & 4 *W. & M.* c. 11. § 3. enacts, that the forty days' continuance of any person in a parish or town, which then conferred a settlement, should be accounted from the publication of a notice in writing which he should deliver to the churchwarden or overseer of the poor, and the latter was to cause it to be read publicly in church. Sect. 6. provided, that any person exercising an annual office in the parish during the year should gain a settlement without having delivered such notice in writing; and sect. 7. enacted, that if any unmarried person, not having any child or children, should be lawfully hired into any parish or town for one year, such service should be adjudged and deemed a good settlement therein, although no notice in writing were delivered and published. Now, the words *such service* must refer to a service under the contract of hiring mentioned in the former part of the clause; and if that be so, this statute clearly required that the service should be under a contract of yearly hiring. The legislature in this statute seems to have considered the exercising of an annual office in the parish during the year, and the being hired into the parish for a year, as equivalent to the notice to the parish which was required by the former section. Inasmuch, however, as the exercising of the parochial office was not sufficient to give a settlement unless it were exercised during the year, doubts were entertained whether the service under the contract of hiring should not also continue during a year. If the service for the year were not required by that statute, the contract of hiring for the year is the only circumstance from which the parish could be deemed to have had notice; and if so, it was essential that the contract should be made in the parish. But doubts being entertained whether service for a year was required, stat. 8 & 9 *W.* 3. c. 30. was passed. Sect. 4. recites, that doubts had arisen touching the settlement of persons unmarried, not having any child or children, lawfully *hired* into a pa-

rish or town for one year; and then enacts, that no such person *so hired as aforesaid* shall be deemed to have a good settlement in such parish or township, unless such person shall continue in the service during the space of one whole year. The latter statute did not intend to dispense with any thing required by the former, but to add another qualification to those already required to confer a settlement. The service spoken of in the latter statute is the same service that was contemplated by stat. 3 & 4 *W. & M. c.* 11., viz. a service under a contract of hiring for a year. I think, therefore, that in order to give a settlement in any parish, some part of the service must be under a contract of yearly hiring. That being so, there was no settlement in the parish of *Sudborough*, and the order of sessions must therefore be confirmed. Order of sessions confirmed.

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[*Vide ante*, p. 372.]

Rex v. *The Inh. of St. Mary, in the Borough of Kidwelly, E.* 5 *Geo.* 4. 2 *B. & C.* 750. Removal of *William Williams*, his wife and children, from the parish of *St. Mary, Kidwelly*, in the county of *Carmarthen*, to the parish of *Llandevilog*, in the same county; the sessions quashed the order, subject, &c.—Case: On the trial of the appeal the appellants admitted that the legal settlement of the pauper, *William Williams*, had been in the parish of *Llandevilog*, but contended, that he had gained a subsequent settlement by hiring and service. The appellants proved, that when *Williams* was about fourteen years of age he lived with his father in the parish of *St. Ishmael*, in the county of *Carmarthen*, and being desirous of being apprenticed to a shoemaker, his father agreed with one *John Thomas*, a shoemaker in the parish of *St. Ishmael*, to give him a guinea for teaching his son, the pauper, the trade of a shoemaker for twelve months, the father finding the pauper lodging, and every thing else during that time. The pauper served the whole twelve months under that agreement. There was no indenture or writing, but the pauper considered it as an apprenticeship, and his father and master treated and spoke to him as an apprentice during such twelve months; and his father and master told him there was a guinea paid for teaching him the trade. The pauper's father, at the end of the year, came to an agreement with *Thomas*, that the pauper should work with *Thomas* twelve months, making shoes at 3*d*. per pair for the first half year, and at 4*d*. per pair the remaining half year. The pauper worked with him about *six months* under that agreement, and then went away and worked at several places, until his marriage, which happened 1785. He soon afterwards removed to the parish of *St. Mary*.— After hearing counsel in support of the order of sessions: *Bayley* J. The question in this case is, whether a settlement has been gained by hiring and service. In this case there was a contract of hiring, but under that contract there was only a service for six months. If, however, that service can be connected with the service of the preceding year, then a settlement was gained in the parish of *St. Ishmael*. Now, in order to gain a settlement by hiring and service, the service must be under a contract, creating the relation of master and servant. Here, the first contract created only the relation of teacher and

The father of a pauper aged fourteen years, agreed by parol to give a shoemaker a guinea for teaching his trade to the pauper for twelve months. The son served the twelve months under that agreement. At the end of that period, the father agreed that his son should work for the shoemaker for twelve months, making shoes at 3*d*. per pair the first six months, and 4*d*. per pair the last six months; under this latter agreement the pauper served six months *only*: Held, that this latter service could not be connected with the service of the former year so as to give a settlement, inasmuch as the first agreement created the relation of teacher and scholar, and not that of mas-

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ter and servant, and the whole year's service, required to confer a settlement, must be under a contract or contracts creating the relation of master and servant.

scholar, and the service under it not being under a contract of hiring, cannot be coupled with the subsequent service. *Rex* v. *Bilborough* (*ante*) is an authority in point. There the master agreed, by parol contract, to teach the pauper to make stockings during the year, for which he was to receive two guineas, and the pauper was to have his earnings, paying his master for the use of the frame, &c.; and the pauper continued in the service a year and a half, and it was contended, that the pauper gained a settlement by hiring and service; but the Court said that the pauper never contracted to serve the master, and that the only agreement was, that the master should teach the pauper for a year. In the present case there was no obligation on the part of the pauper to serve the master, nor could he have been punished for refusing to do so The relation existing between them was that of teacher and scholar. Now, although it be clear, that services under different hirings may be connected, so as to complete the year's service, yet the whole of the several services constituting the year's service must be under a contract or contracts, creating an obligation to serve. In this case, there was not any obligation on the pauper to serve under the first agreement. That service, therefore, not being a service under a contract creating the relation of master and servant, cannot be connected with the subsequent service; and there being only a service of six months under a contract of hiring, no settlement was gained. *Littledale* J. In order to gain a settlement by hiring and service, the service must be for a year, under a contract or contracts, creating the relation of master and servant. The pauper served only six months under such a contract. The contract under which he served during the former year, created the relation of master and scholar, and not that of master and servant. The service under that contract, therefore, cannot be connected with the service under the subsequent contract, for the effect of that would be, to enable the pauper to gain a settlement by a service, partly under a contract of hiring, and partly under a contract of a different description; whereas the entire year's service ought to be under a contract of hiring. Order of sessions quashed. (*a*)

[*Vide ante*, p. 384.]

An agreement was made between *A.* and *B.* that the latter should serve for three years at 1*s.* per day when *B.* had work to do, and when he had no work, *A.* was not to be paid. At the time when the

Rex v. *The Inh. of Polesworth*, *E.* 5 *Geo.* 4. 2 *B.* & *C.* 715. Removal of *Hannah Brindley* from the parish of *Polesworth*, in the county of *Warwick*, to the parish of *Saint Peter*, in the parish of *Derby*, in the county of *Derby*; the sessions quashed the order, subject, &c.—Case: The pauper derived her settlement from her father, *William Brindley*, who being legally settled in the parish of *Saint Peter's*, *Derby*, in *December* 1784, agreed with one *William Boolows*, his uncle, then resident in the parish of *Polesworth*, to serve him for three years, at 1*s.* per day, when he had work for him to do; and when he had not work for him he was not to be paid; *Boolows* told him at the same time he should not have work for him all the year round, particularly in the winter, and

(*a*) This case was argued later in the day than that of *Rex* v. *Lydd*, and when *Abbott* C. J. was sitting at *N. P.* at Guildhall. *Holroyd* J. had gone to chambers before the judgment was pronounced.

that when he had not work for him he might get work from other people. After making the agreement, *William Brindley* went to work in the collieries, until the spring of the year 1785 and then went to work with his uncle, according to the agreement, and remained with him about nine months, when his uncle told him he had no employment for him, and he went and worked several weeks with a Mr. *Barrett* of *Pooley Hall*, as a labouring man, and after that, his uncle having again work, he returned to him, and continued to work for him about nine months longer, when he quitted him without his leave, and went to *Birmingham*, from whence he never returned to his service. He never received any wages from his uncle when he did no work for him, and never accounted with him for any wages he received from other people when absent from his service.—After argument; *Abbott* C. J. In this case the master tells the pauper at the time when he is hired, that he shall not have work for him all the year round, particularly in the winter, and when he had not work for him, he might get work from other people. There is merely a hiring for so much of the year as the master has work for him. He has the control over the servant so long as there is work for him. As soon as there is no work the servant ceases to be under the control of the master, and is at liberty to get work elswhere. We are all of opinion, that there was not any hiring for a year. Order of sessions quashed.

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agreement was made, the master told the servant that he should not have work for him during the whole year, and particularly during the winter, and that when he had not work for him he might get work from other people: Held, that this was an exceptive hiring, and that the pauper having worked for other people during the winter season when his master had no work, and having at other times worked for his master during two successive years, did not gain a settlement.

[*Vide ante*, p. 384.]

Rex v. *The Inhab. of Lydd*, *E.* 5 *Geo.* 4. 2 *B.* & *C.* 754. Removal of *G. Goldsmith*, his wife and children, from the parish of *Lydd*, in the county of *Kent*, to the parish of *Thurnham*, in the same county; the sessions quashed the order, subject, &c.—Case: In the year 1810, the pauper gained a settlement by hiring and service in the parish of *Thurnham*. On the 26th or 27th of *August* 1819, the pauper, being then unmarried and having no child, was hired to Mr. *Fisher*, in the parish of *Midley*, for three years at 20*l.* per annum, as looker and to spud thistles. (The duty of a looker is to superintend the flocks and fences upon the lands of his employer, and he frequently has several masters, and works for any persons who may employ him according as his time allows.) The pauper went into the service of Mr. *Fisher* on the 26th of *October*, and was married on that day. He served Mr. *Fisher* for three years. He did not work for any person but Mr. *Fisher* for the first year and three quarters of his service, but at the expiration of that time he hired himself as looker to a Mr. *Russell*. During his service with *Fisher* he did other work for him not belonging to his duty as looker, such as turning mould, lambing and shearing, for which he was always paid upon new and separate bargains on each occasion; and upon other occasions he did daywork as a labourer for *Fisher*, for which he was also paid by the day. At the time of the pauper's contract with *Fisher*, nothing was said about his being at liberty to hire himself to, or work for other masters during the three years, but *Fisher* said he did not think he should have full employment for the pauper; he would employ him as far as he could. Whilst he was working for other people, his wife hoisted a signal by putting a flag out of the

A pauper had been hired for three years at 20*l.* per annum as a looker. The duty of a looker is to superintend the flocks and fences of his employer. When he was hired, his master told him that he should not have full employment for him, but that he would employ him as much as he could. He was not to do any work for his master, other than that belonging to the office of looker, without

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receiving extra wages. During the first year and three quarters he worked for his master only, but was always paid extra for any work not belonging to his office of looker: Held, that there was not any hiring for a year, and that the pauper did not gain a settlement by service under such an hiring.

window, upon which he considered himself bound to quit his work and attend to his duty as looker to *Fisher*, for which he was originally hired; and he invariably returned to *Fisher* when so summoned, and never worked on any lands from whence the flag could not be seen during the whole of the three years. He was not, however, to do any work for *Fisher* other than that for which he was originally hired as a looker, without receiving extra wages. His agreement with *Russell* was by the acre, and he bargained with him for a year at 14*l*. During the whole of the three years he lived on *Fisher's* land at *Midley*. — After argument; *Abbott* C. J. I am of opinion that there was not in this case any contract of hiring and service for one whole year. Here the master had not the control over the servant for the entire year, but only for so much of the year as the duties of looker required his attention. At other times he was at liberty to employ himself in any manner he pleased, either in working for other persons or for his master, and when he worked for the latter he always received extra pay. — *Bayley J*. In order to gain a settlement by hiring and service there must be a contract for one whole year, and a service for the whole year. This is distinguishable from the cases cited, because here, from the very nature of the employment, it was not likely to fill up the whole time of the pauper. Scarcely ever more than a few hours each day would be required. It is very like the case of a person employed to attend, as an occasional servant, for the purpose of brushing clothes. The master has no control over the servant as soon as he has performed the required service, and that takes up but a small portion of his time. Order of sessions quashed.

[*Vide ante*, p. 403.]

A pauper was hired to serve for part of a year. Three weeks before the expiration of the period of service, the mistress asked the pauper to stay again. The pauper replied that she had no objection if they could agree about wages. They did agree for 3*l*. 10*s*., and 1*s*. earnest was paid; nothing was then said as to the time for which the pauper was to serve, but a week afterwards, the mistress said

Rex v. *The Inhab. of Market Bosworth*, *E.* 5 *Geo.* 4. 2 *B.* & *C.* 757. Removal of *Hannah Stain*, single woman, from the parish of *Fleckney*, in the county of *Leicester*, to the parish of *Market Bosworth* in the same county; the sessions confirmed the order, subject, &c. — Case: The pauper was hired by, and lived with, Mrs. *W.*, in the parish of *Market Bosworth*, from *Shrove Tuesday*, 1821, until *Old Michaelmas-day* following. Three weeks before the last-mentioned day, Mrs. *W.* asked the pauper "to stay again," to which she replied, that she had no objection if they could agree about wages: they agreed for 3*l*. 10*s*., and one shilling earnest was paid. At the hiring, nothing was said as to the time for which the pauper was to serve. There was no interval between the first and second service. A fortnight before *Old Michaelmas* her mistress said to her, "*Hannah*, I *have* hired you, but mentioned no time; remember you are hired for fifty-one weeks." To this the pauper said, "Very well." The pauper lived with Mrs. *W.* until *Old Michaelmas-day*, 1822. *She asked to have her week just before Christmas*. Mrs. *W.* said, "You shall have three or four days now, I cannot spare you the whole week." She staid away three successive days and nights then, and had the other four days at different times during the year, returning on each of them to sleep at her mistress's, and her mistress gave her two or three holidays besides. She never was absent without her mistress's permission, and always returned

into the service, and at the end of the year received her wages. — After argument. *Per Bayley* J. (a) The question in this case ought to have been decided by the court of quarter sessions; but inasmuch as great expence had been incurred, we will pronounce our judgment upon the facts stated in the Case. And I am of opinion that a settlement was gained in *Market Bosworth*. It appears, that three weeks before *Old Michaelmas* the mistress asked the pauper to stay again, to which she replied, that she had no objection if they could agree about wages; they did agree for 3*l.* 10*s.*, and one shilling earnest was paid. Now, it is quite clear that that constituted a general hiring for a year; and the question is, whether the subsequent conversation between the mistress and the servant amounted to an alteration of the original bargain, so as to convert that which had been a hiring for a year into a hiring for fifty-one weeks only, or whether it was a dispensation by the mistress with one week's service. Now it is laid down in Mr. *Nolan's Treatise on the Poor Laws*, vol. i. p. 355, *3d edit.*, that where the absence of the servant takes place on the master's account and at his request, the Courts have been inclined to infer a dispensation, inasmuch as the absence originates with him in whom the power of dispensation is vested, and is only acquiesced in by the servant. Now, apply that rule to the present case. There having been a general hiring for a year, the mistress afterwards states to the servant that she had hired her, but that she had mentioned no time, and desires her to remember that she was hired for fifty-one weeks. The servant made no overture to the mistress for a change of the original agreement. According to the above rule, therefore, this ought to be construed to be a dispensation: the mistress acknowledges that there had been a hiring, and if she intended to explain the original agreement, her explanation of it was false; for, in the first instance, there is a hiring for a year at an entire sum of 3*l.* 10*s.*, and there is no stipulation afterwards that the pauper was to be paid wages for fifty-one weeks, at the rate of 3*l.* 10*s.* for the whole year. I think, therefore, that there was no alteration of the original bargain, but that there was a dispensation with the service of the pauper for one week, and I think that the sessions were warranted in considering this either a case of dispensation or of fraud. I cannot distinguish this case from that of *Rex* v. *Sulgrave*, (*ante*, p. 402.) There the pauper was hired in *February* to serve till *Old Michaelmas*. On the *Friday* before *Old Michaelmas* his master asked him if he would stay again, the pauper said he would if they could agree about wages, and asked five guineas, which the master thought too much. Afterwards the master said he would give him five guineas, and he gave him one shilling in earnest; but while he was putting his hand in his pocket for the shilling, he said, You shall go away a fortnight before *Michaelmas* because of your settlement, and that he would give him that time to get what he could, to which the servant assented. It was held that this was a mere dispensation with the service for that time, and not such an exception out of the original contract as would make the hiring insufficient for the purpose of gaining

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to the pauper, "I have hired you, but mentioned no time; remember that you are hired for fifty-one weeks," to which the pauper assented: Held, that this was a good hiring for a year.

(a) *Abbott* C. J. was sitting at Guildhall.

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a settlement; and *Ashhurst* J., in delivering his judgment, said, "that the contract was complete before any thing was said relative to the fortnight's absence; and that this was a dispensation with the service, and not an exception out of the original contract. An exception is a stipulation on the part of the person for whose benefit it is introduced, but here it was not made at the request of the servant, but on the offer of the master." Upon the authority of that case, as well as upon general principles, I am of opinion that the sessions were warranted upon these facts, in coming to the conclusion that there was a hiring for a year; and that there was no exception in the contract of hiring, but a mere dispensation by the mistress with one week's service: and I think, therefore, that the order of sessions ought to be confirmed. — Order of sessions confirmed.

[*Vide ante*, p. 425.]

Where a master, who had hired a servant for a year, at the expiration of eleven months made a complaint against him before a justice of peace, and the latter, under the provisions of stat. 20 G. 2. c. 19. § 2., committed the servant to the house of correction for one calendar month, which did not expire until after the end of the year for which he had been hired: Held, that this was an abiding in the master's service for a whole year within the meaning of stat. 8 & 9 W. 3. c. 30, and that the servant thereby gained a settlement.

Rex v. *The Inhab. of Hallow*, *E.* 5 *Geo.* 4. 2 *B.* & *C.* 739. Removal of *Thomas Hewett*, *Elizabeth* his wife, and their two children, from the parish of *Powick*, in the county of *Worcester*, to the parish of *Hallow*, in the same county; the sessions confirmed the order, subject, &c. — Case: The pauper, *Thomas Hewett*, gained a settlement in the parish of *Hallow*, about fourteen years ago, by a hiring and service for a year in that parish. At the expiration of that service the pauper went into the service of one *John Price*, of the parish of *Tibberton*, in the said county, having been previously hired by *John Price*, at *Perthshore Mop*, a few days before *Old Michaelmas*, when the pauper's service in *Hallow* expired, to serve him the said *John Price*, as waggoner's boy, from the said *Old Michaelmas* to the *Old Michaelmas* following, at the wages of 5*l*. The pauper went into the service of the said *John Price*, according to this hiring, and remained with him, serving in the parish of *Tibberton*, till about a month before the *Old Michaelmas-day* at which his service with *John Price* was to end, according to the said hiring; when disputes having arisen between *John Price* and the pauper, in consequence of his having charged the pauper with misconduct, *John Price* caused the pauper to be summoned to answer such charges before *P. G.*, one of the justices of the peace for the county of *Worcester*. *John Price* and the pauper appeared before *P. G.*, and the complaint was accordingly heard, and upon the hearing it was agreed between *P. G.* so being such justice as aforesaid, and *John Price*, that the pauper should either beg his (*John Price*'s) pardon, and be received back into his service again, or if the pauper refused to beg his pardon, that he should remain the rest of his year in prison. The pauper refused to beg *John Price*'s pardon, whereupon he was committed to the house of correction, to be there kept to hard labour for one calendar month. The year for which the pauper had been so hired expired two days before the expiration of the calendar month for which he was committed. The pauper remained in the gaol during the whole of that month, and left the gaol at the expiration thereof. During the time of his imprisonment the pauper's clothes remained at the house of *John Price*, in *Tibberton*; and when the pauper left the gaol, he went to *John Price*'s house, and took away his clothes, and re-

ceived from *John Price* all his wages, with the exception of 7*s.*, which *John Price* deducted for the time the pauper had been in gaol, and he then quitted *John Price*'s house. — After argument, *Abbott* C. J. I am of opinion that there was a complete service for a year, notwithstanding the commitment under stat. 20 *Geo.* 2. *c.* 19.; but I wish to be understood as speaking of a commitment under that statute only. The second section is for the punishment of servants in the character of servants. It gives the magistrate power to put an end to the service, if he thinks fit: when that power is exercised it puts an end to all question of settlement. But the statute gives another power also, *viz.* that of imprisoning the offending party for any period not exceeding one month. If an imprisonment for a month, under that provision, defeats the settlement, imprisonment for a week, or even for a day, must have the same effect. There is nothing to shew that the legislature contemplated or intended to produce such an effect. I therefore think, that a servant committed under the statute in question must be considered as abiding in the master's service, within the meaning of stat. 8 & 9 *W.* 3. 30. It follows that in this case the pauper gained a settlement in *Tibberton;* the order of sessions must therefore be quashed. — *Bayley* J. I am of opinion that this case falls within the distinction taken by *Le Blanc* J. in *Rex* v. *Barton-upon-Irwell, ante*, p. 421. He there says, "It was under the authority of the contract that his master acted when he punished him for misconduct, therefore it was not a dissolution." So here the pauper was imprisoned at the instance of the master. The latter might have pressed for a dissolution of the contract, but, instead of that, there was an understanding between him and the justice, that the pauper should either beg his master's pardon or remain the rest of the year in prison. It has been conceded that that does not operate as a dissolution, and I think it may be put either as a constructive service or a dispensation. In the case cited it was held, that the servant gained a settlement; and I cannot see why the imprisonment should have a different effect at the end from that which it had in the middle of the year. It has been urged in argument, that the master, by taking the servant back, is to be considered as dispensing with his service during his absence. But the contract not being dissolved, if the servant were released from prison before the end of the year, the master would be under the necessity of receiving him. For these reasons, I am of opinion, that the pauper gained a settlement in *Tibberton*, and that the order of sessions must be quashed. — *Holroyd* J. There is a great difference where the servant's absence from actual service arises, as in this case, at the instance of the master, and where it is occasioned by any criminal act done by the servant, and independently of the master. The ground of the commitment of the servant was absence from his duty for a day: possibly the master might have had a right to discharge him for that neglect; but he neither did that of his own authority, nor applied to the justice to do it, so that the relation of master and servant continued. I think that the service also continued, just the same as if the occurrence had happened in the middle of the year. The servant being imprisoned and punished as a servant, might have insisted upon going back to his master, or the master might have compelled him to return, as soon as he was discharged out of custody. — *Littledale* J. In

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this case neither the master nor the justice having discharged the servant, the relation of master and servant continued. Then the servant, when in prison, did not absent himself voluntarily from the master's service. The imprisonment was at the instance of the master; the servant might still be ready and willing to work for him. I am therefore of opinion, that it must be considered as a constructive service, and sufficient to gain a settlement in *Tibberton*. The order of removal to *Hallow* was therefore bad. — Order of sessions quashed.

[*Vide ante*, 22 G. 3. c. 23., p. 539.]

54 G. 3. c. 170. Prisoner's settlement.

By stat. 54 *Geo.* 3. *c.* 170. § 4. It is enacted, that no person shall be deemed or taken to gain any settlement by reason of any residence within any district, parish, township, or hamlet, while he, she, or they shall be detained or confined as a prisoner within any such district, parish, township, or hamlet, on any civil process, or for any contempt whatsoever."

[*Vide ante*, p. 719.]

Upon the trial of an appeal at the quarter sessions, the respondent parish proved relief granted to the father of the pauper by the appellant parish before the year 1815. The appellant parish then tendered an order of sessions made in the year 1815, quashing an order of justices for the removal of the brother of the pauper to the appellant parish. And they tendered parol evidence to shew that the ground of the decision of the court of quarter sessions was, that the father of the pauper had not at that time any settlement in the appellant parish, and consequently, that the son had not any derivative

Rex v. *The Inhab. of Knaptoft*, *E.* 5 *Geo.* 4. 2 *B.* & *C.* 883. Order dated the 19th of *August*, 1823, for the removal of *Elizabeth Burdett*, single woman, then with child, from the parish of *Gumley*, in the county of *Leicester*, to the parish of *Knaptoft*, in the same county; the sessions confirmed the order, subject, &c.— Case: The respondents, in support of the order, proved that the father of the pauper, while residing in the respondent's parish, had received relief from the parish of *Knaptoft*, for five years prior to 1815. The parish of *Knaptoft* then offered in evidence an order of the court of quarter sessions, upon an appeal in 1815, between the same parishes, respecting the *settlement of a brother of the pauper*, by which an order, adjudging the brother to be settled in the parish of *Knaptoft*, was quashed. This was objected to by the counsel for the parish of *Gumley*, and rejected by the court. Another order was then produced, whereby the pauper, *Elizabeth Burdett*, was removed from *Gumley* to *Mowsley*, in 1822, which was afterwards quashed by consent. The appellants then called the chairman of the court in 1815, who proved that his notes of the trial were destroyed, and that he did not remember the evidence. They then called the father of the pauper and asked him whether he was a witness at the trial in 1815; to this he answered in the affirmative. He was then asked to what facts he was then examined; this was objected to by the counsel for the respondents. The Court thought that the question was not relevant and not admissible, and they confirmed the order of removal, subject to the opinion of this Court as to the admissibility of the evidence so tendered by the appellants. — The Case having been argued *Cur. adv. vult.* On a subsequent day the judgment of the Court was delivered by *Bayley* J. In this case two justices, by their order, removed the pauper, *Elizabeth Burdett*, from the parish of *Gumley* to that of *Knaptoft*. The latter parish appealed: and upon the trial of the appeal, the respondents proved that *Knaptoft* had relieved the pauper's father, while residing in the respondent parish, for five years prior to the year 1815.

The appellant parish, in order to shew that at the time when the relief was given the settlement of the father was not in *Knaptoft*, offered in evidence an order of sessions made in 1815, in an appeal between the same parishes respecting the settlement of the brother of the pauper. By that order of sessions the order of justices adjudicating that the brother was settled in *Knaptoft* was quashed. The court of quarter sessions refused to receive this evidence, and my Brother *Holroyd* and I, (before whom this case was argued,) are of opinion that it was properly rejected. The order of removal in the former case may have been quashed upon one of the three following grounds: either that the pauper had originally a settlement in *Knaptoft*, and acquired a subsequent settlement in another parish, or that he never had any settlement in *Knaptoft*, or that the respondents had not given sufficient proof of any such settlement. The case does not state on what ground the order was quashed. But it has been stated in the course of the argument, that the point then tried, and upon which the sessions actually adjudicated, was, that the pauper had not at that time any derivative settlement in *Knaptoft*, because his father was not then settled there; that in fact the point tried was, whether the father's settlement was then in *Knaptoft*. If we thought that the evidence of that fact would be admissible, and would be material if stated in the case, we should send it down again to the sessions. But we are of opinion, that the order of sessions in 1815 would not be admissible in evidence, for the purpose of shewing that the pauper, in 1815, was not settled in *Knaptoft*. If it be admissible at all, it must be upon the same principle upon which judgments of the superior courts are received in evidence. Now the rule upon that subject is thus laid down in the *Duchess of Kingston's* case (20 *Howell's St. Tr.* 538.), by Lord Ch. J. *De Grey*: "The judgment of a court of concurrent jurisdiction, directly upon the point, is as a plea, a bar, or as evidence, conclusive between the same parties, upon the *same matter directly in question* in another court: secondly, the judgment of a court of exclusive jurisdiction, *directly upon the point*, is, in like manner, conclusive upon the same matter, between the same parties, coming incidentally in question in another court, for a different purpose. But neither the judgment of a concurrent or exclusive jurisdiction is evidence of any matter which came collaterally in question, though within their jurisdiction; nor of any matter incidentally cognizable, nor of any matter to be inferred by argument from the judgment." The principle, therefore, is, that the judgment of the same court, or of a court of concurrent jurisdiction, is conclusive evidence between the same parties upon the same subject-matter directly in question in another court; but that as to any matter arising collaterally, it is no evidence whatever. Then the question to be considered in this case is, whether the point actually decided with respect to the settlement of the brother in 1815 is necessarily the same as that which was to be decided by the Court in the present case with respect to the sister; or whether the point now sought to be established as to the father's settlement was one which then came collaterally in question. When we consider the nature of an order of removal, it is quite clear that the point decided in 1815 is not necessarily the same as that which the court of quarter sessions were called upon to

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settlement there: Held, that even if parol evidence was admissible to prove the ground of the decision of the sessions, still that the order of sessions was not evidence that the father of the pauper was not settled in the appellant parish in 1815, because the father's settlement was a matter that arose collaterally on the trial of the first appeal.

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adjudicate in the present instance. When a party is removed to a parish as the place of his settlement, and the order of removal is confirmed by the sessions, that is an adjudication by them, that the pauper at the time of the order of removal was settled in the appellant parish. In the case of *The Inhab. of Harrow* v. *Ryslip*, 2 *Salk.* 524, it was held that a confirmation of an order of removal upon appeal was final as to all parishes; because the very point decided is, that the pauper is settled in the parish to which he has been removed. But where the order of removal is quashed, the sessions only adjudge negatively that the pauper is not settled in the appellant parish. They do not say affirmatively that he is settled in any other parish. The point decided, therefore, by the sessions in 1815 was, that the brother of the pauper in this case was not at that time settled in the parish of *Knaptoft;* but it is said, that although that is the only point which appears to have been decided upon the face of the judgment itself, still that the point actually decided upon the evidence then adduced was, that the settlement of the father of the pauper was not at that time in *Knaptoft,* and consequently that the pauper himself had no derivative settlement there. The parol evidence was offered to prove that such was the point then litigated and adjudicated. Without deciding whether such evidence was admissible to explain the ground of the judgment, it is sufficient to say, that that was a point which arose collaterally, and therefore upon the principle laid down by Lord C. J. *De Grey*, the order of sessions would not be evidence to prove that fact in another case between the same parties. For these reasons, therefore, we think that the order of sessions ought to be confirmed. — Order of sessions confirmed.

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ERRATA.—VOL. IV.

Page 18. line 30., for "14" read "17."
—— 27. note (*a*.) line 1., for "*Kirby*" read "*Kirkby*."
—— 44. line 11. of text from bottom, dele "§ 2" in margin; and insert it just before (*a*).
—— 67. line 21., for "*ante*" read "*post*," p. 102.
—— 132. Form of Poor Rate, 4th column after "sixpence" add "in."
—— 175. line 36., for "*Waltham*" read "*Walton*."
—— 203. line 19., for "195" read "196."
—— 203. line 18., for "196" read "197."
—— 318. line 40., for "284" read "285."
—— 332. line 2., for "300" read "330."
—— 347. line 27., for "401" read "402."
—— 360. line 32., for "269" read "346."
—— 405. line 14., for "405" read "406."
—— 407. line 18., for "400" read "401."
—— 407. line 5. of text from bottom, for "405" read "406."
—— 408. line 8., for "405" read "406."
—— 411. line 35., for "411" read "412."
—— 412. line 19., for "409" read "410."
—— 413. line 20., for "411" read "412."
—— 414. line 35., for "411" read "412."
—— 416. line 47., for "423" read "426."
—— 416. line 48., for "420" read "422."
—— 416. line 52., for "419" read "421."
—— 424. line 46., for "440" read "441."
—— 428. line 4., for "409" read "410."
—— 428. line 4 , for "413" read "414."
—— 445. line 3. from bottom, for "442" read "444."
—— 465. line 4., for "462" read "464."
—— 465. line 51., for "462" read "464."
—— 447. line 3. from bottom, for "*post*, 448" read "*ante*, 446."
—— 466. line 28., for "462" read "464."
—— 496. line 37 , for "366" read "354."
—— 503. line 24., for "422" read "514."
—— 511. line 23., for "507" read "508."
—— 581. line 12., from bottom, for "581" read "604."
—— 807. line 2., for "*suspended*" read "*superseded*."
—— 810. last line in margin, for "*carriage*" read "*marriage*."